

EVIDENTIARY HEARING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:

Application for Certification for)	Docket No.
The Walnut Energy Center by the)	02-AFC-4
Turlock Irrigation District)	
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CALIFORNIA ENERGY COMMISSION

HEARING ROOM A

1516 NINTH STREET

SACRAMENTO, CALIFORNIA

WEDNESDAY, OCTOBER 9, 2003

10:14 a.m.

Reported by
Alan Meade
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Commissioner James D. Boyd, Presiding Member

HEARING OFFICER AND ADVISORS PRESENT

Stanley Valkosky, Hearing Officer

STAFF AND CONSULTANTS PRESENT

Caryn Holmes, Staff Counsel

STAFF WITNESSES

Alvin J. Greenberg, Ph.D.
Risk Science Associates

APPLICANT

Jeffery D. Harris, Esq.
Ellison, Schneider & Harris LLP

APPLICANT WITNESSES

Randy Baysinger, P.E.
Turlock Irrigation District

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I N D E X

	Page
Opening Comments, Commissioner Boyd	1
Introductions and Purpose	1
TOPICS	
Air Quality -- condition AQ-C8	3
Soil and Water	5
Applicant Exhibits	7
Staff Exhibits	8
Compliance and General Conditions	9
Applicant Witness R. Baysinger	10
Direct Examination by Mr. Harris	10
Cross Examination by Ms. Holmes	40
Redirect by Mr. Harris	56
Recross by Ms. Holmes	59
Applicant Exhibits	62
Staff Exhibits	63
Applicant Witness A. Greenberg	64
Direct Examination by Ms. Holmes	64
Cross Examination by Mr. Harris	89
Redirect by Ms. Holmes	128
Recross by Mr. Harris	129
Applicant exhibits	121
Staff exhibits	133
Closing legal arguments	136
By Mr. Harris	136
By Ms. Holmes	143
Rebuttals	150
Closing Comments	155
Adjournment	162
Reporter's Certificate	163

P R O C E E D I N G S

10:14 a.m.

COMMISSIONER BOYD: Good morning, this is the third Evidentiary Hearing in the Walnut Energy Center. And before we begin I'd like to do the customary introductions. Introduce the Committee, yours truly, we've met before. And then I'll ask all of you to identify yourself.

And I don't know if we have a representative from the Public Advisors Office here today, or if we're self-facilitating, but we're pretty good at that. Anyway, if the Applicant would like to introduce his folks.

MR. HARRIS: Thank you. My name is Jeff Harris, I'm here on behalf of the district. And to my right is Mr. Randy Baysinger, who is the Assistant General Manager for generation for the district.

In the audience we have Mr. John Carrier with CH2M Hill, Susan Strachan with the Strachan Company, I'm going to say. And Jim McLucas with Calpine Engineering.

COMMISSIONER BOYD: Okay, staff?

MS. HOLMES: Thank you, good morning. My name is Caryn Holmes, I'm Staff Counsel. To my

1 left is Dr. Alvin Greenberg, one of our witnesses
2 this morning. And also in the audience is Lance
3 Shaw, the Compliance Project Manager; Paul
4 Richins, who's sitting in -- as the case may be --
5 for the Project Manager; and Rick Tyler, staff.

6 COMMISSIONER BOYD: Okay, good morning
7 everybody, that just about exhausts the audience.
8 (laughter)

9 To my right, the gentleman who will
10 chair this early part of the meeting of course,
11 Mr. Stan Valkosky, and I'll turn it over to him in
12 just a moment. But for the record, some
13 background here.

14 I think, as everybody here recalls, the
15 Committee continued some topics to today's
16 hearings in a Notice that we issued on September
17 23rd of this year, and reinforced and expanded
18 orally at our September 29th hearing.

19 We will discuss three topics listed on
20 the agenda, specifically air quality, condition
21 AQ-C8, and the topics of soil and water resources
22 and compliance.

23 There are several filings relevant to
24 the today's proceedings. They are, first, staff's
25 FSA Part One, dated August 8th of this year.

1 Secondly, the Applicant compared
2 testimony for all topics on September 15, 2003;
3 the staff's addendum to the FSA, dated September
4 22nd; and staff's supplemental testimony, which we
5 just got last night, on soil and water, dated
6 October 8th.

7 And with that, I will turn the
8 proceedings over to Mr. Valkosky. So, in fact,
9 Stan, it's yours.

10 MR. VALKOSKY: Thank you, Commissioner
11 Boyd. Well, as indicated on the agenda, we're
12 going to do air quality, soil and water, and
13 compliance, in that order.

14 First, I'll take air quality. By way of
15 background, we held the record open solely to see
16 if the parties could achieve a stipulation on
17 Condition AQ-C8. Mr. Harris?

18 MR. HARRIS: I always hate to start with
19 bad news, but we were unable to reach such a
20 stipulation. We exchanged a couple of versions of
21 language, but I don't think we met --

22 COMMISSIONER BOYD: Jeff, raise your
23 mike -- it's showing green?

24 MR. HARRIS: It's showing green, but I
25 don't hear any amplification. Thank you. I'll

1 speak a little louder.

2 COMMISSIONER BOYD: Thank you. I can
3 hear you, as long as the Court Reporter can.

4 MR. HARRIS: Thank you. We have
5 exchanged a few drafts, but were unable to reach
6 agreement on language. My question for the
7 Committee is would you like us, in our briefs, to
8 propose language that might be a compromise?

9 Our initial position still remains, we
10 ought to delete the section AQ-C8 altogether, but
11 if the Committee would like us to take a draft of
12 some compromise language that would, I guess,
13 impose on the parties, we'd be willing to do that.
14 So, do you have a preference in that regard Mr.
15 Valkosky?

16 MR. VALKOSKY: The Committee is always
17 amenable to attempts to compromise, so that would
18 certainly be a welcome addition to your brief.

19 MR. HARRIS: Okay, we'll take that.

20 MR. VALKOSKY: Does staff have anything
21 to add to that?

22 MS. HOLMES: Nothing further.

23 MR. VALKOSKY: Is there anything further
24 on the topic of air quality? Seeing nothing,
25 we'll formally close the record on that topic, and

1 move to soil and water. This was, again, another
2 topic that appeared susceptible to stipulation.

3 As Commissioner Boyd mentioned, last
4 night we received supplemental testimony from
5 staff for conditions soil and water five and six.
6 Also, at this time I'd like to identify that as
7 exhibit 55. Mr. Harris.

8 MR. HARRIS: Yes, thank you, Mr.
9 Valkosky. Exhibit 55 reflects the language that
10 we've agreed to for soil and waters five and six.
11 The only caveat I'd put into that is I didn't get
12 a chance to talk to Mr. Helm to make sure that all
13 the language is exactly as he recalled it.

14 Everybody else on the team believes it
15 is, so to the extent it's anything it's
16 administerial, typo kind of stuff, and I don't
17 expect that that's the case either, so--.

18 I want to thank the staff for putting
19 this together, it's been marked, you know, as the
20 staff's supplemental testimony, but it very much
21 reflects a compromise that's negotiated between
22 the parties, so thanks to Caryn and the staff for
23 putting that together for the Committee.

24 I think it's a good document and it
25 reflects the agreement of the parties, as I said,

1 but for potential typo things.

2 MR. VALKOSKY: Counselor Harris, as I
3 recall the original testimony, there was dispute
4 over some additional conditions, soil and water
5 two comes into mind.

6 MR. HARRIS: Correct.

7 MR. VALKOSKY: What am I to understand,
8 now we've basically got two choices. Is there an
9 existing dispute, or are the conditions as
10 reflected in staff's testimony in exhibits 47 and
11 55 dispositive of all the issues?

12 MR. HARRIS: With an explanation. They
13 are dispositive. That explanation is that soil
14 and water one and three, first and third
15 conditions there relate to the regional boards'
16 role. Staff has agreed to remove the "and
17 approval", so that language is reflected in the
18 addendum, so that's correct.

19 With soil and water two, that language
20 is acceptable to the Applicant. The explanation
21 that I wanted to offer -- and again I want to
22 thank the staff for sitting down and talking to us
23 about this -- and the basic question we asked is
24 how do we prepare a report that hits the bar here?

25 Our staff, Susan Strachan, sat down with

1 Lorraine White, went through some documents,
2 looked specifically at some documents from
3 Pastoria, and I think they reached an
4 understanding of how they are going to meet that
5 bar.

6 So really, based upon that conversation,
7 the district is now comfortable that we understand
8 where the bar is, and what staff will be looking
9 for. We want to thank Ms. White and Ms. Holmes
10 for facilitating that, and Mr. Eller, who is not
11 here today.

12 So with that explanation, essentially
13 staff has made us comfortable as to how they
14 interpret that language, so we don't feel the need
15 to amend it any further. So, all a long way of
16 saying one, two and three are acceptable to the
17 Applicant.

18 MR. VALKOSKY: With that, would you like
19 to move Applicant's evidence on soil and water?

20 MR. HARRIS: Excuse me, yes I would like
21 to move those documents.

22 MR. VALKOSKY: Is there objection?

23 MS. HOLMES: No objection.

24 MR. VALKOSKY: Those documents are
25 admitted. Ms. Holmes?

1 MS. HOLMES: Thank you. Staff's
2 testimony on soil and water was prepared by
3 Lorraine White and is found in exhibit 11, exhibit
4 47, and I believe has now been identified as
5 exhibit 55.

6 A statement of her qualifications was
7 included in exhibit 11, as well as a declaration
8 -- I believe there's a declaration for exhibit 47,
9 but Ms. White is on jury duty, and we don't have a
10 declaration for 55. Staff, you know -- as staff
11 counsel I can stipulate to the fact that that
12 revised condition is acceptable to the Energy
13 Commission staff.

14 MR. HARRIS: And I can stipulate that
15 the lack of declaration is not a concern to the
16 Applicant. We know that this reflects Ms. White's
17 testimony.

18 MR. VALKOSKY: Okay, fine.

19 MS. HOLMES: So with that I would move
20 that those portions of staff testimony be moved
21 into the record.

22 MR. VALKOSKY: Is there objection, Mr.
23 Harris?

24 MR. HARRIS: No objection.

25 MR. VALKOSKY: No objection, those

1 documents are admitted. is there any comment on
2 the soil and water topic? Seeing none, we'll
3 close the record on that topic, and move to
4 compliance.

5 I understand there is some residual
6 disagreement with staff, specifically over the
7 approval language as well as some somewhat
8 editorial changes.

9 Mr. Harris, in your presentation I would
10 appreciate it if your witness can point out the
11 specific differences between your version and
12 staff's version, as well as offering explanation
13 as to why Applicant does not find a compliance
14 eight condition similar to those adopted in the
15 last half dozen or so Commission cases acceptable.
16 With that, proceed.

17 MR. HARRIS: Okay, thank you. I would
18 like to have the witness sworn, Mr. Baysinger.
19 Whereupon,

20 RANDY BAYSINGER
21 was called as a witness herein, and after first
22 having been duly sworn, was examined and testified
23 as follows:

24 MR. HARRIS: Okay, we're adjusting a
25 little bit now to meet the Committee's objective,

1 but we're good to go now. Could you please state
2 your name for the record?

3 MR. BAYSINGER: Randy Baysinger.

4 MR. HARRIS: And what subject matter
5 testimony are you here to sponsor today?

6 MR. BAYSINGER: I'm here to sponsor
7 general conditions, including compliance
8 monitoring and closure plant.

9 MR. HARRIS: And were the documents that
10 you sponsored as part of your prefile testimony
11 identified in section 1D of that testimony?

12 MR. BAYSINGER: Yes.

13 MR. HARRIS: And that would be section
14 four of exhibit one, is that correct?

15 MR. BAYSINGER: Yes.

16 MR. HARRIS: Are there any changes,
17 corrections, or clarifications to your testimony?

18 MR. BAYSINGER: No.

19 MR. HARRIS: And were these documents
20 prepared either by you or at your direction?

21 MR. BAYSINGER: Yes.

22 MR. HARRIS: Are the facts stated
23 therein true to the best of your knowledge?

24 MR. BAYSINGER: Yes.

25 MR. HARRIS: And are the opinions stated

1 there in your own?

2 MR. BAYSINGER: Yes they are.

3 MR. HARRIS: And do you adopt this as
4 your testimony?

5 MR. BAYSINGER: I do.

6 MR. HARRIS: Can you describe for the
7 Committee your qualifications please?

8 MR. HARRIS: I have a Bachelor of
9 Science Degree in Electrical Engineering from the
10 University of California at Davis. I also am a
11 registered Professional Engineer, registered in
12 the state of California.

13 I have 27 years of experience in the
14 power industry, the last 21 of which have been at
15 the Turlock Irrigation District. I have
16 essentially held three positions at TID in those
17 21 years.

18 The first position was as head of design
19 for the generation and transmission section. And
20 in that capacity -- transmission at TID also
21 includes switchyards and substations -- so I was
22 responsible for all design and construction of
23 generation transmission and switchyard and
24 substation projects, and then they get turned over
25 to operations.

1 A little further along, TID created a
2 Project Management section in the Engineering
3 department, which I was asked to lead. And in
4 that capacity I managed several large special
5 projects for the district, and also acted as a
6 consultant and/or mentor to other project managers
7 that were being developed within the company that
8 were managing other projects within the district.

9 Since 2000 I was appointed Assistant
10 General Manager of the district, with primary
11 responsibilities in the area of generation
12 facilities. In that capacity I'm responsible for
13 permitting, design, construction, operation and
14 maintenance, and safety and security of all the
15 district's generation facilities.

16 And in that role -- particularly with
17 regards to security -- we routinely meet with the
18 local police departments, local sheriff, local
19 offices of the California Highway Patrol, the FBI,
20 fire departments, whatever, on an ongoing basis,
21 not only just in generation, but in all our
22 facilities.

23 MR. HARRIS: Okay, thank you for that.
24 I'd like to return now to the district, and one of
25 the issues here obviously is the district's

1 interest in the security plans. So can you give
2 us a brief summary of what the district does and
3 who the district is, please?

4 MR. BAYSINGER: Sure. Turlock
5 Irrigation District has been in business since
6 1887, so some 115 years. We started as an
7 irrigation district. We were the first one in
8 California.

9 In 1924 we entered the electrical
10 business, with the completion of a hydroelectric
11 dam that was the first one that produced
12 electricity for us, our first dam that produced
13 electricity.

14 And we've been in the retail business
15 since then. We are a vertically integrated
16 electric utility, meaning that we have generation,
17 transmission, and distribution facilities. We are
18 the end use supplier to people within our service
19 territory, which currently is 425 square miles in
20 the central valley of the San Joaquin Valley.

21 We also have recently completed
22 acquiring 225 square miles of service territory
23 from PG&E, which is known as the west side, the
24 west side of the central valley in our area.

25 And, just a couple of things I'd like to

1 point out. If you recall from the information
2 hearing we had a lot of people speak on our
3 behalf, our local industrial leaders, our large
4 customers, small customers, local businesspeople.

5 They gave us, obviously, a pretty
6 glowing report on how we were perceived in the
7 area. We're very appreciative of that fact. With
8 regard to the acquisition of the west side, this
9 was not a annexation condemnation by TID and PG&E.
10 This was an issue where the west side communities
11 over there were very disgruntled with PG&E, and
12 sought to find a way to either make PG&E be more
13 compliant with their request or try to oust them.

14 In that regard they asked four different
15 agencies to come in and make presentations to them
16 as a whole, as to who would be their future power
17 supplier, even though it was a franchised territory
18 of PG&E.

19 TID, Modesto Irrigation District, PG&E,
20 and Enron were invited to make presentations on
21 how they would operate and supply electricity to
22 that area. The mention of Enron shows you how
23 long this issue goes back to. But Enron at that
24 time was interested in getting into the
25 distribution business in California.

1 After all of these presentations, their
2 local community leaders and then a local commute
3 selected TID and asked us to be their supplier,
4 and essentially forced PG&E to deal with us,
5 because again, we were not going to annex, we were
6 not going to condemn, but PG&E for whatever reason
7 saw it in their best interest to sell that to us.

8 So it was a noncontroversial sale, and
9 the deals were worked out and approved by the PUC
10 and approved by the bankruptcy court, and that
11 acquisition will be complete a year from now.

12 The whole point of all that exercise is
13 to demonstrate that we serve a community that we
14 think we serve very reliably, we have high
15 expectations, our customers have very high
16 expectations of us -- and we gladly accept those
17 expectations -- and we try to deliver the product
18 that they seek.

19 We have operated our system very
20 reliably. We are a low-cost supplier, our
21 reliability statistics are ranked very high in the
22 state and in the nation, as far as the number of
23 outages and duration of outages. We think we
24 provide superior customer service, and I think the
25 customers spoke to you about that.

1 Another point is that we are planning to
2 become a control area. And a control area has
3 huge implications for us, in that there are some
4 tremendous economic benefits to us for becoming a
5 control area.

6 There also are tremendous
7 responsibilities, and the economic penalty for not
8 fulfilling your duties as a control area are
9 pretty severe. So the rewards are great, the
10 risks are high.

11 All that comes together in that what we
12 feel it is our duty, and our responsibility, that
13 we gladly take on, that we provide facilities --
14 whether it's water, electrical, customer service,
15 meter reading, whatever -- all our facilities are
16 designed and operated with security and safety in
17 mind to meet those expectations of those customers
18 to continue to be their preferred choice of
19 provider.

20 And we feel we have the most to lose if
21 we design, build and operate plants that aren't
22 safe, that aren't secure, that aren't reliable.
23 We have a tremendous vested interest in not only
24 this plant but in all our facilities, and we take
25 the issue of security very gravely.

1 MR. HARRIS: Mr. Baysinger, thank you
2 for that background. You're obviously very
3 passionate about the district, and we appreciate
4 that. What experience have you had recently with
5 security and vulnerability analysis?

6 MR. BAYSINGER: Well, as I say, we look
7 at all of our facilities with an eye towards
8 security and reliability. Most recently, post-
9 9/11, the Federal Regulatory Energy Commission
10 required all FERC licensees, at their
11 hydroelectric dams, to make an assessment of their
12 facilities that they considered category one, of
13 which we have one project that is considered
14 category one.

15 And category one is a project that, if
16 it were to fail, or significant impact were to be
17 created by some sort of terrorism or vandalism or
18 whatever, could endanger life or property -- and
19 obviously Don Pedro Dam is the dam that I'm
20 speaking of, it's the sixth largest dam, it's the
21 sixth largest reservoir and it's the tenth largest
22 dam in the United States, and if that were to fail
23 obviously there would be severe flooding
24 downstream, sever property loss, and the potential
25 for loss of life and significant loss of property.

1 So it falls in that category, so we were
2 required to do a full blown vulnerability and
3 security assessment of that project. We have
4 completed that assessment and worked through the
5 security plans, and they have been deemed by FERC
6 to be in compliance with their program and their
7 directive.

8 MR. HARRIS: Can you very briefly
9 discuss that process in general terms?

10 MR. BAYSINGER: The process, in general
11 terms, is you start by doing a threat assessment
12 and vulnerability assessment. Kind of a screening
13 process to see what issues that we're dealing
14 with, if we look at -- we actually expand beyond
15 what FERC actually requires. We look at potential
16 loss of life, potential loss of property, impacts
17 downstream that would be the result of a failure.

18 We also look at the mission of the
19 project or the facility. What does it desire to
20 do? Does it desire to provide water, is it's
21 mission to provide electricity? So we look at it
22 also from an impact if something were to happen
23 that maybe not, wouldn't fail the dam and flood
24 people downstream, but if it resulted in inability
25 for us to deliver water or deliver electricity,

1 that also is a vulnerability impact to us. So we
2 broadened the scope of what actually is required.

3 MR. HARRIS: We want to move along a
4 little bit, but let me clarify one point. You're
5 not under the impression that FERC hydro
6 experience is directly relevant to gas plants, is
7 that correct?

8 MR. BAYSINGER: Oh, absolutely not, it's
9 relevant to hydroelectric plants.

10 MR. HARRIS: Okay, so you're point to
11 that as an analogy of some of your security
12 experience, is that correct?

13 MR. HARRIS: That's correct, we use it
14 as an example. We've been involved in security
15 assessments and vulnerability assessments but we
16 are in no way saying that the FERC model or the
17 hydro model is the one that should be used for
18 this plant.

19 MR. HARRIS: Okay, so the model is not
20 the important thing in your perspective?

21 MR. BAYSINGER: No, the important thing
22 is the process that's used, the methodology that's
23 used. Most security vulnerability assessments all
24 follow principally the same model tenants.

25 MR. HARRIS: Okay, thanks. You

1 mentioned you work with local PD and Sheriffs.
2 Can you briefly explain why that is a security
3 issue for you?

4 MR. BAYSINGER: It's a security issue
5 from a number of reasons. Number one, we think
6 security is a local issue. Vulnerability
7 assessments and threat assessments are not
8 strictly related to terrorism. It's much broader
9 than that.

10 We do work with the local PD's,
11 Sheriffs, FBI on an ongoing basis. Because they
12 are the ones that know what's going on in an area,
13 they know what's going on in that what threats are
14 out there that we may not be privy to. And they
15 work with us on an almost daily basis.

16 But anytime that something happens that
17 they need to know about they'll call us in and
18 "you need to know about this." And vice versely,
19 if we have a new plant or whatever then we bring
20 them in and we want to know what they think the
21 threats are.

22 We look at the threats, as I've said,
23 much broader than terrorism. We look at --
24 actually, terrorism can be divided into two
25 groups. There's what we call national terrorism,

1 which are eco-terrorists and para-military and the
2 maverick people like up in Montana. You have the
3 international terrorism which is Al Qaeda and
4 those types of things.

5 You also have to look at a group that we
6 call vandalism, and these are gang-related
7 activities, local criminal activities that pop
8 up -- one just recently happened in our area, and
9 the sheriff worked very well with us to make sure
10 that our people were safe.

11 And one of the biggest threats that we
12 look at is insider problems, the disgruntled
13 employee can have a huge devastating effect on a
14 power plant or any facility, because they have
15 local knowledge, if they have control of a
16 facility -- so that's all part of the threat
17 assessment and the security system that we look
18 at.

19 MR. HARRIS: I want to move now to the
20 role you see for staff, and the issue that's kind
21 of narrowed down to, the approval of that security
22 plan. So let me ask you directly, there may be
23 some confusion. What role do you see for staff in
24 the security process?

25 MR. BAYSINGER: We think staff has a big

1 role in it. We believe security is a local issue
2 because most of the problems are going to be
3 local. But staff brings a statewide expertise to
4 this area, they deal with power plants across the
5 state, they know what the other power plant
6 operators are doing and they can share that
7 technology with us.

8 They bring a different perspective and
9 we welcome all perspectives in looking at that.
10 The way this condition is written currently, we --
11 Applicant -- prepares a vulnerability assessment,
12 a security assessment, we put the plan together,
13 we do all this work, and then we have the final
14 product, the security plan, at our site.

15 And then the staff comes in at the end
16 of the day and reviews and approves it. We would
17 much rather that they be there with us at
18 breakfast, lunch and dinner during the day working
19 on the plan than to come in at the last minute.

20 We think they should be there, as part
21 of the collaborative process, listening for the
22 local law enforcement agencies, listening to our
23 security experts and our threat assessment,
24 understanding what decisions were made and why
25 they were made, what the dialogue was while we

1 made these decisions, so that they're not there at
2 the end of the day and see a plan and say "well,
3 how did you come up with this." They were part of
4 this, of putting that plan together.

5 We think that's very important. We
6 think they have a lot to offer to us, and we would
7 rather have them there in the morning rather than
8 at the end of the day.

9 MR. HARRIS: So it really comes down
10 then to the approval authority, is that right?

11 MR. BAYSINGER: That's correct.

12 MR. HARRIS: Why is that issue of
13 approval authority so important to the district?

14 MR. BAYSINGER: Well, as outlined in our
15 testimony, we believe safety and security are
16 local issues. We deal with these issues all the
17 time. We think that we are the best ones that can
18 identify -- not we being TID, but we being the
19 local stakeholders, also being law enforcement and
20 our customers.

21 We have the biggest vested interest in
22 this plant, and as I alluded to before, safety and
23 reliability is crucial to our operations and our
24 goals of meeting the needs and expectations of our
25 customers.

1 We would like to have clear and uniform
2 standards, if the CEC staff is going to approve
3 those plans, and also to make modifications of
4 those plans later. There's some language in there
5 tat really troubles me, in that there's
6 modifications down the road that they can come in
7 and modify the plant.

8 And, you know, I don't know what
9 standards I have to hit. They have not identified
10 anything, as they do in some of the other plans.

11 MR. HARRIS: So you're concerned that
12 you don't know exactly where the bar is?

13 MR. BAYSINGER: I don't know where the
14 bar is, and I'm only going to be judged at the end
15 of the day, rather than being involved on a day-
16 to-day and finding out what we're doing and where
17 we're going.

18 Very troubling about this approval is
19 that, if there is a disagreement over the final
20 plan, as this condition is written, staff comes in
21 at the end of the day and says "we don't like your
22 plan, we think you need to add this feature or
23 take that feature out."

24 The ramifications to the district are
25 huge, because if we do not agree with their

1 assessment, for whatever reason, if the threat
2 assessment doesn't say that this particular item
3 is warranted, if they come in and say "well, we're
4 doing this to the plants in L.A., so you need to
5 do it."

6 And the threat assessment doesn't say
7 that it's needed, the local law enforcement
8 agencies say that we'd rather not see that there,
9 because it actually inhibits our ability to help
10 you.

11 If we come to that point where we
12 disagree, what are TID's options? Our options are
13 knuckle under and do it, or cease construction, or
14 cease operations and fight it out because we would
15 be non-compliant, and there is no dispute
16 resolution or appeal process that leads to another
17 problem with this plan.

18 These plans are done, confidentiality,
19 we don't even follow the plan with the Commission.
20 We have it on site, they come down and look at it.
21 So if we end up at the end of the day disagreeing
22 over the implementation of the plan, it doesn't
23 get approved, I don't know where I go to appeal
24 this thing, because there is no plan up here in
25 Sacramento.

1 MR. HARRIS: So, Mr. Baysinger, to use
2 the phrase again, at the end of the day the big
3 concern is that you're either going to have to
4 either stop construction or stop operation over
5 these disagreements, is that correct?

6 MR. BAYSINGER: That's right, or just
7 say knuckle under and say well, I have to do this
8 because my alternatives are I either have to stop
9 construction or stop operation while we sort this
10 out.

11 MR. HARRIS: Okay, thank you. Mr.
12 Valkosky, we hadn't planned to go through the
13 language in our prefile line byline, but you said
14 you did want a summary. So what I think I'd like
15 Mr. Baysinger to do is turn to page, I want him to
16 turn to the annotated version of com A -- let me
17 find a version with the page numbering.

18 MR. BAYSINGER: Is it in here?

19 MR. HARRIS: Yes, I've got it here.

20 MR. BAYSINGER: Is that starting on page
21 44, to page 45?

22 MR. HARRIS: Yes, I want to pull up the
23 PDF version to make sure that we give you correct
24 page citations. Okay, the annotated version
25 starts on page 44.

1 Let me explain what we'd like Mr.
2 Baysinger to do. Basically the first part of the
3 testimony is that, our proposed condition without
4 any annotations. The annotations that show up
5 here in italics and in bracketed text are intended
6 to explain whether these items are taken from the
7 FSA, and how they might be changed in any respect.

8 So, Mr. Baysinger, starting I guess at
9 the beginning on page 44, let's talk briefly about
10 the annotations there, for com 8.

11 MR. BAYSINGER: Okay, just let me go
12 through them. Well, the first one is just the
13 title. We just changed the title to reflect that
14 there are essentially three plans being produced
15 here under this condition.

16 MR. HARRIS: And those are the same
17 three plans that are under the staff's version of
18 the language, is that correct?

19 MR. BAYSINGER: That's correct.

20 MR. HARRIS: Okay, let's move down to
21 the section that says "construction security
22 plan", and there's a large annotation there. Can
23 you briefly summarize that for us?

24 MR. BAYSINGER: Yes. Under the
25 construction security plan, this goes to what I

1 just said earlier, that if there ends up being a
2 dispute or an inability to reach a compromise with
3 staff, construction ends up being halted.

4 MR. HARRIS: Okay, so the first sentence
5 is literally cut and pasted out of the FSA?

6 MR. BAYSINGER: That's correct.

7 MR. HARRIS: And the second sentence,
8 before the annotation, we've changed "review and
9 approval" to "review and comment." Is that
10 correct?

11 MR. BAYSINGER: That's correct.

12 MR. HARRIS: Okay. Let's move over to
13 the top of page 45. There is security plan in
14 five areas. These same five items were listed in
15 the FSA, is that correct?

16 MR. BAYSINGER: That's correct. All we
17 did was, for brevity we collectively gave them the
18 moniker "specialized industrial materials."

19 MR. HARRIS: Excuse me, you've jumped a
20 little ahead of me.

21 MR. BAYSINGER: Oops, oh, I'm sorry.

22 MR. HARRIS: The five items under
23 "construction security plan." Those are all the
24 same as in the FSA, is that correct?

25 MR. BAYSINGER: They are all the same.

1 MR. HARRIS: Okay. Now move to the
2 security operations plan. You have given some
3 items a special moniker there. Can you explain
4 that, please?

5 MR. BAYSINGER: Specialized industrial
6 materials is just a grouping of the items that
7 were listed in the FSA that are of concern here
8 for security plan.

9 MR. HARRIS: So you've basically taken
10 that list of items and given them a name for
11 brevity?

12 MR. BAYSINGER: That's correct. And the
13 list is the same as in the FSA.

14 MR. HARRIS: Okay. Moving down there,
15 under "security operation plans," it says "the
16 plan must address the following." There are five
17 items, items one through four there?

18 MR. BAYSINGER: Items one through four
19 there are exactly the same as in the FSA.

20 MR. HARRIS: Okay, and item five you've
21 basically made a slight change of staff language,
22 but did you intend to change the meaning of that
23 section?

24 MR. BAYSINGER: Well, we didn't. All we
25 were doing was adding some specificity to it. The

1 condition requires us to do background checks, and
2 we just wanted to delineate which types of
3 background checks we were going to be doing.

4 MR. HARRIS: So, again, to be clear, you
5 didn't think you were changing staff's
6 requirement, you just wanted it, the understanding
7 you have is the staff wanted a description of your
8 process, is that correct?

9 MR. BAYSINGER: That's correct, and I
10 believe that was agreed to in a workshop.

11 MR. HARRIS: Okay. Item six again, is
12 another item where you've slightly changed the
13 staff's language. Can you explain that change?

14 MR. BAYSINGER: The change here is that,
15 for those specialized industrial materials that
16 we've identified above that are the same as staff
17 is concerned about, for the vendors that deliver
18 that, we're basically saying that the burden for
19 conducting those background checks on their
20 employees is on them, and the way that we would do
21 that is in our contracts with those vendors we
22 would provide language that you needed to comply
23 with the law.

24 Most of these items do have federal law
25 that says these people have to have background

1 checks to deliver and transport these materials
2 anyway, and we're committing and basically adding
3 more specificity as to how we would comply with
4 that condition.

5 MR. HARRIS: Okay, moving on to the top
6 of the next page, items seven through ten there
7 about perimeter security. Can you give us a brief
8 summary of that?

9 MR. BAYSINGER: Basically what we're
10 saying here is that, seven through ten are as in
11 the FSA, and we're --

12 MR. HARRIS: So your understanding is
13 you can use any combination of these factors, but
14 you're not required to use all of them, is that
15 correct?

16 MR. BAYSINGER: That's correct. Our
17 understanding and our ideas, and we will consider
18 each of these, and use one or more of them in
19 combination, but not necessarily implement all of
20 them.

21 MR. HARRIS: So the intent was to
22 clarify that you don't have to use security guards
23 and cameras and still cameras and perimeter breach
24 factors, but rather to choose from those items, is
25 that correct?

1 MR. BAYSINGER: Well, we would choose
2 based on what the threat assessment, vulnerability
3 assessment and security plan and local law
4 enforcement agencies all came up with as agreeing
5 as to what's needed.

6 MR. HARRIS: Okay, so basically it's a
7 menu of items to select from?

8 MR. BAYSINGER: A menu of items.

9 MR. HARRIS: The vulnerability
10 assessment, it looks like there's no disagreement
11 there, is that correct?

12 MR. BAYSINGER: That's correct, this is
13 exactly as in the FSA language.

14 MR. HARRIS: The section that is
15 relatively new, it's this last section on dispute
16 resolutions, and that obviously goes to your
17 concerns about approval authority. I believe
18 you've been through these five items already in
19 your direct testimony.

20 MR. BAYSINGER: I believe I have, these
21 are the items I think I discussed initially.

22 MR. HARRIS: And they all go basically
23 to the idea that you're concerned about approval
24 authority.

25 MR. BAYSINGER: Correct.

1 MR. HARRIS: And finally, at the very
2 end of that condition, there is a section there
3 about filing documents under confidentiality. Is
4 it your understanding that language may be
5 redundant given com 9?

6 MR. BAYSINGER: I believe so, but as
7 we've said with the premium given to security,
8 redundancy is acceptable to us.

9 MR. HARRIS: I think -- sorry about that
10 last part being a little choppy, but we hadn't
11 intended to go through it with that much detail.
12 Okay, I believe that probably covers our direct
13 testimony, but we make the witness available for
14 cross-examination.

15 MR. VALKOSKY: Thank you, Mr. Harris.
16 Before we have cross-examination I've got a few
17 questions for you, Mr. Baysinger. First of all,
18 you mentioned the desire to work with staff in a
19 collaborative manner.

20 Now, assuming that happens, would you
21 still have that same level of concern about any
22 ultimate approval authority that may be exercised
23 by staff?

24 MR. BAYSINGER: I think I would, because
25 the risk to us, or the impact is, at the end of

1 the day, if there's no dispute resolution down
2 there, I'm still forced to comply with something
3 that I didn't agree with, or stop construction or
4 stop operation.

5 MR. VALKOSKY: Okay. Would you have the
6 same level of concern about the standards that
7 staff was applying, assuming they worked with you
8 in a collaborative manner?

9 MR. BAYSINGER: I don't think so,
10 because one of the things that we would do in a
11 collaborative process is, when all stakeholders
12 get together you generally, you know, agree on how
13 we're going to implement this study.

14 MR. VALKOSKY: You mentioned that you
15 had concerns about the dispute resolution process.
16 My understanding of the compliance plan is that
17 there is a dispute resolution process contained in
18 the plan. Do you have a different understanding?

19 MR. HARRIS: I'm sorry, Mr. Valkosky,
20 which plan are you talking about?

21 MR. VALKOSKY: The general compliance
22 conditions.

23 MR. HARRIS: General compliance
24 conditions?

25 MR. VALKOSKY: There's typically a

1 dispute resolution process that appears toward the
2 end of that.

3 MR. HARRIS: You're talking about the
4 section that talks about informal dispute
5 resolution --

6 MR. VALKOSKY: Exactly.

7 MR. HARRIS: -- and then up to a
8 complaint, is that --?

9 MR. VALKOSKY: That's the section.

10 MR. BAYSINGER: Yes. I don't think that
11 applies to this because it's a confidential plan.
12 It's kind of hard if -- if the plan is not
13 submitted up here to Sacramento, or even if -- as
14 the condition's written the plan is just onsite,
15 and the staff comes down and looks at it, and
16 either approves it or not.

17 If we got into a dispute, the only way
18 it makes it's way up here to Sacramento is under a
19 confidential filing, and then I don't see how --
20 my understanding is we can't talk about that in an
21 open hearing.

22 MR. VALKOSKY: So your concern is --
23 well, there's a couple of things. The informal
24 dispute resolution process does not necessarily
25 have an informal hearing involved in it, so that's

1 a separate issue.

2 MR. BAYSINGER: No, I don't think I'm
3 saying that.

4 MR. VALKOSKY: You're concerned that the
5 informal resolution dispute process could not
6 occur in a confidential manner? Typically, the
7 informal dispute resolution process is really a
8 face-to-face between the Applicant and the staff
9 compliance project manager and associated people.

10 MR. BAYSINGER: No, I understand that.
11 The informal dispute resolution that's between
12 Applicant and staff, and that's acceptable.
13 That's essentially what we would be doing anyway
14 if we disagreed with the final plan.

15 You know, obviously we're going to try
16 and work very hard with staff to try to articulate
17 why we have difficulty with the plan, and try to
18 reach some compromise. Again, at the end of the
19 day, I don't see an arbiter in that informal
20 dispute resolution.

21 MR. VALKOSKY: Okay, so is it fair to
22 say that the concern is not that a process does
23 not exist, but that the process doesn't clearly
24 define a referee, basically, for a difference of
25 opinion?

1 MR. BAYSINGER: Yes, I mean, in all
2 dispute resolutions processes that are out there,
3 just the fact that you have that compels the two
4 sides to try to reach agreement, because you
5 really don't want to go there. So it's a hammer
6 out there for both sides that says, you know, you
7 better get this thing worked out, or you're both
8 at risk.

9 MR. VALKOSKY: You mention in your
10 testimony construction would have to be stopped if
11 there was a dispute over the operational security
12 plan, is that correct?

13 MR. BAYSINGER: Yes, because the
14 condition requires that the operational plan be
15 approved prior to the delivery of these
16 specialized industrial, or these hazardous
17 materials that are identified here, before they
18 are brought on site.

19 So those things are brought on site
20 before construction is complete because they are
21 necessary for final startup testing and
22 commissioning and what not, so at some point in
23 time, if the plan was not approved, I could not go
24 further because I need those chemicals to continue
25 on with the work.

1 MR. VALKOSKY: Okay. Is that your
2 understanding of the interpretation that staff has
3 of that provision?

4 MR. BAYSINGER: Yes, I think it's,
5 that's my -- yes.

6 MR. VALKOSKY: Okay, thank you. You
7 also indicate, the last line of your testimony on
8 page 44, "apparently staff now believe security
9 plans should be submitted under request, for
10 confidentiality." Is that based on belief coming
11 from your discussions, or coming from a particular
12 provision of the combined plan?

13 MR. BAYSINGER: I believe that comes
14 from their addendum, in that the condition as
15 written requires us to just complete the plan and
16 have it onsite, and then in their addendum they're
17 talking about filing that under confidentiality.
18 So there's a disjoint between what their language
19 says and what their addendum says.

20 MR. VALKOSKY: Okay, because my
21 understanding -- at least before the addendum --
22 was that the confidentiality filings were
23 essential left up to the Applicant to designate
24 whether they are going to be confidential or not.
25 I'm just not aware of a requirement and -- I hope

1 staff can clear this up for me.

2 MR. BAYSINGER: Well, I think the
3 confidentiality filing was brought up in that, in
4 my objection to that, the only plan exists is
5 onsite, and if there's a dispute, what appeal
6 process do I have, and they brought up well, you
7 can file a confidentiality. I don't -- it doesn't
8 buy me anything.

9 MR. VALKOSKY: Okay. Final question.
10 Assuming I'm correct in stating that, in the last
11 five or six cases, the Commission has adopted
12 language similar to that proposed by staff in that
13 the security plan is submitted to the CPM for
14 review and approval.

15 Are you contending that those decisions
16 have been in error, or that this case is somehow
17 different and should be treated differently from
18 that line of cases?

19 MR. BAYSINGER: This is our first case
20 before the Energy Commission, so I'm only
21 concerned with TID.

22 MR. VALKOSKY: Okay, so basically what
23 you're saying is you've got no comment on it?
24 (laughter)

25 MR. BAYSINGER: I'll take that, yes.

1 MR. VALKOSKY: Cross-examination?

2 MS. HOLMES: Thank you. Mr. Baysinger,
3 are you responsible for the security of the
4 infrastructure that's owned by TID?

5 MR. BAYSINGER: Just the generation
6 facilities.

7 MS. HOLMES: How many gas-fired plants
8 does TID currently own?

9 MR. BAYSINGER: Currently two.

10 MS. HOLMES: And -- aside from this
11 project, correct? Two operating?

12 MR. BAYSINGER: Yes.

13 MS. HOLMES: Do those plants use SCR?

14 MR. BAYSINGER: One does, one does not.

15 MS. HOLMES: Does the plant that use SCR
16 use ammonia?

17 MR. BAYSINGER: Yes it does.

18 MS. HOLMES: Does it use anhydrous
19 ammonia?

20 MR. BAYSINGER: Yes it does.

21 MS. HOLMES: How much does it use?

22 MR. BAYSINGER: Well, it depends on how
23 much it runs, I don't have the number off the top
24 of my head. We have a 9,000 gallon tank, and it
25 typically gets filled every three to four months.

1 MS. HOLMES: Okay. And how long have
2 you been operating that plant?

3 MR. BAYSINGER: Since 1996.

4 MS. HOLMES: Do you have any formal
5 training or education in the area of security,
6 infrastructure security?

7 MR. BAYSINGER: No.

8 MS. HOLMES: You haven't taken any
9 classes, for example, offered by the National Fire
10 Protection Association, or any of the other
11 organizations that offer that kind of thing?

12 MR. BAYSINGER: No.

13 MS. HOLMES: You referred to your recent
14 experience with the FERC process. You're familiar
15 with the FERC process, obviously. Did you use the
16 RAM D assessment methodology in your assessment?

17 MR. BAYSINGER: No we did not, we used
18 RAM C.

19 MS. HOLMES: And did FERC review and
20 approve your results on the analysis?

21 MR. BAYSINGER: They don't approve.
22 They were involved as a stakeholder in the
23 workshops, and were onsite during the
24 vulnerability assessment and meetings with the
25 local law enforcement agencies.

1 They provided comments to the plan as it
2 was developed. But they do not approve the plan,
3 they just require you to have it. What they do
4 say is we think you are in compliance with the
5 regulation.

6 MS. HOLMES: And they said that to you
7 with respect to the Don Pedro Dam?

8 MR. BAYSINGER: Yes.

9 MS. HOLMES: I wanted to go over some of
10 the issues that you raised in your testimony,
11 specifically beginning with the list on the bottom
12 of page 46. I'm just going to focus, again, on
13 the approval authority, since that seems to be
14 where most of the --

15 MR. BAYSINGER: Sure.

16 MS. HOLMES: -- disagreement is. First
17 you stated that the Commission staff has not
18 demonstrated the necessity of shifting
19 accountability to a state agency that does not
20 have the legal authority or the expertise to share
21 that accountability.

22 I'm going to ask to address the question
23 of the Commission's authority in legal argument
24 following the witness's testimony, as we discussed
25 in a prior --

1 MR. VALKOSKY: Yes, we have provision
2 for that following the testimony.

3 MS. HOLMES: Thank you. But I would
4 like to ask some questions now about our
5 expertise. Have you evaluated the expertise of
6 other agencies in reviewing security plans?

7 MR. BAYSINGER: I'm not sure I
8 understand, on what basis?

9 MS. HOLMES: I'm asking you whether or
10 not the Energy Commission is the only agency about
11 which you have issued this kind of opinion, that
12 we don't have expertise?

13 MR. BAYSINGER: No, the -- well, the
14 Energy Commission is the only one that's come to
15 me and says "I need to approve your plan."

16 MS. HOLMES: What criteria did you use
17 when you determined that the Commission doesn't
18 have the expertise to review these plans and
19 approve them?

20 MR. BAYSINGER: Well, the expertise is
21 that there's no specificity in the plan, or in the
22 condition itself.

23 MS. HOLMES: I don't think that quite
24 answers my question. How do you know whether or
25 not an agency has expertise or not? You have

1 concluded that the Energy Commission does not have
2 expertise, and I'm trying to understand what
3 criteria you used to reach that conclusion?

4 MR. BAYSINGER: Well, I just look at
5 what the condition says, and the non-specificity
6 in the plan itself. It doesn't direct me how to
7 do it, it doesn't give me a bar to hit, it leaves
8 me that -- I have no clearcut direction or
9 expectations to meet, I think I just came to the
10 conclusion that there's no expertise behind it.

11 MS. HOLMES: Do you know how many plant
12 security plans the CEC has reviewed and/or
13 approved?

14 MR. BAYSINGER: No I do not.

15 MS. HOLMES: Do you know what kind of
16 training CEC personnel have had who review these
17 kinds of plans?

18 MR. BAYSINGER: No I do not.

19 MS. HOLMES: Do you know what kind of
20 educational background they have?

21 MR. BAYSINGER: No I do not.

22 MS. HOLMES: Do you know whether or not
23 the Energy Commission consults with other state
24 and federal agencies with responsibility for
25 security?

1 MR. BAYSINGER: I don't specifically
2 know that.

3 MS. HOLMES: The second point that you
4 raised had to do with a number of issues. Let me
5 just paraphrase, if I can. You said that staff is
6 proposing to have approval authority without
7 standards, without requiring consistency, without
8 ensuring that confidentiality is protected, and
9 without ensuring that there all rules in place
10 regarding expertise and conflict of interest.

11 And I'd like to just go through those
12 one by one. One of the concerns that you've
13 expressed repeatedly this morning is that you
14 don't know -- if I can use your words -- where the
15 bar is.

16 Do you see this security plan as
17 different from the other 25 or so plans that are
18 contained in the staff FSA with performance-based
19 standards? I can give you a list if you like.

20 MR. BAYSINGER: The answer is I do, but
21 before we go, could you point to me where we're,
22 you're reading?

23 MS. HOLMES: I'm still at the bottom of
24 page 46, and I was paraphrasing your second item
25 of concern. It seemed to me that it raised those

1 specific topics.

2 MR. BAYSINGER: Okay, thank you.

3 MR. HARRIS: Could you repeat the
4 question please?

5 MS. HOLMES: The first question had to
6 do with, without the standards, and I think that
7 we were discussing the fact that you regard this
8 as different from, say, the safety plan or the
9 hazardous materials management plan, or the
10 traffic plan. What's the difference in your mind?

11 MR. BAYSINGER: The difference in my
12 mind is I can go to staff and have them point out
13 a hazmat plan, or a storm water prevention plan
14 that has been approved for other projects, that
15 can apply here, that has some standards that I can
16 hit.

17 MS. HOLMES: So your concern is that you
18 don't have the ability to review anybody else's
19 security plan, is that a correct way of saying
20 that?

21 MR. BAYSINGER: No, I don't have that
22 ability, but I also don't have any specificity in
23 the plan in what areas I need to take what best
24 management practices are acceptable.

25 MS. HOLMES: So if we were to give you a

1 list of what you're calling best management
2 practices, your concern about the plan would
3 disappear?

4 MR. BAYSINGER: I don't know that they
5 would completely disappear, but it would help to
6 give me an idea of what I needed to do to gain the
7 approval.

8 MS. HOLMES: Is your concern about the
9 lack of standards based upon a belief that the
10 Energy Commission staff won't be consulting with
11 you as you develop this plan?

12 MR. BAYSINGER: That's part of it.

13 MS. HOLMES: And would that concern
14 disappear if you had the assurance that the
15 Commission staff would be willing to work with you
16 as you develop this plan?

17 MR. BAYSINGER: I firmly believe that --
18 reasonable people can agree, and I think I'm
19 reasonable, and I fully expect staff to be
20 reasonable.

21 It would go a long way towards removing
22 my problem with the plan if the staff is there at
23 the beginning of the day and working on the plan
24 and being involved in all the dialogue and hearing
25 what the local law enforcement agencies have to

1 say.

2 MS. HOLMES: I'll be happy to have--
3 just an aside for the Committee -- I'll be happy
4 to have Dr. Greenberg testify as to how staff sees
5 it's role in helping Applicants develop the plan,
6 rather than belabor it here.

7 Another issue you raised under the
8 second point has to do with confidentiality. Are
9 you familiar with the procedures that the
10 Commission has in place to ensure the protection
11 of confidential data?

12 MR. BAYSINGER: Probably not 100
13 percent, but I do know we have made some
14 confidential filings in this case.

15 MS. HOLMES: And can you tell me what
16 the basis is of your statement that the Commission
17 staff, or the condition, excuse me, will not
18 ensure the condition of confidential information?

19 MR. BAYSINGER: I'm not saying that it
20 won't protect the information, I'm saying that,
21 since the information is confidential, who is
22 going to hear it?

23 MS. HOLMES: So you're not aware of the
24 Commission procedures or any other state agencies
25 have in place to deal with confidential

1 information that must be the subject of some sort
2 of dispute resolution process?

3 MR. BAYSINGER: I'm aware of other
4 agencies, I mean, we're a state agency ourselves,
5 and we have the Brown Act, and there are
6 exemptions to the -- there are conditions under
7 the Brown Act where we can meet in private, the
8 board of directors can meet in private to discuss
9 things like personnel issues and legal issues and
10 what not.

11 I'm not aware, in the Energy Commission
12 arena, where if I file a confidential plan and
13 then there's a dispute over that plan, who's the
14 arbiter? My understanding is that it's the siting
15 committee -- the siting committee, or a siting
16 committee, or the full Commission.

17 And I'm not aware that the Commission
18 has a closed-door policy for the Commissioners to
19 sit down and discuss something that was filed
20 confidentially.

21 MS. HOLMES: And again, to the
22 Committee, the staff will be happy to address the
23 Bagley-Keen Act, and provisions that allow those
24 kinds of processes to occur.

25 The third issue that you raised, under

1 item two, has to do with the fact that apparently
2 you have concerns that the condition does not
3 promulgate rules relating to the required
4 expertise. I presume you mean the professionals
5 who would be evaluating the plan.

6 Can you tell me what that concern is
7 based on?

8 MR. HARRIS: I'm not sure where you are?

9 MS. HOLMES: On the very last sentence
10 on page 46. It spills over to page 47. I'll read
11 it to you.

12 It says "second, the FSA seeks to extend
13 to the staff approval authority without setting
14 the standards by which such authority will be
15 exercised. Without requiring the authority to be
16 exercised uniformly and in a non-discretionary
17 manner to all facilities similarly situated,
18 without ensuring that the protection of
19 confidential information that will be reviewed,
20 and without promulgating rules relating to the
21 required expertise...for professionals."

22 MR. HARRIS: That's all right, we have
23 that now.

24 MS. HOLMES: Okay, and I'm wondering
25 what the basis is of your belief that, or your

1 concern that there are no rules relating to the
2 required expertise of professionals?

3 MR. BAYSINGER: I'm not aware of any
4 rulemaking that the Energy Commission has done on
5 the issues of security.

6 MS. HOLMES: Are you familiar with the
7 language of com 8 that was provided in exhibit 47?

8 MR. BAYSINGER: Can you point that out
9 to me?

10 MS. HOLMES: That's the addendum. I'm
11 just pointing out that there is a sentence -- it's
12 on page 14 of my version of exhibit 47, that
13 states that "only Energy Commission personnel who
14 have proper training and proper security clearance
15 shall review and approve the plan." Does that
16 language now alleviate your concern?

17 MR. BAYSINGER: Well, again, it's pretty
18 non-specific. What training, what security, who's
19 security clearance? FBI, state Highway Patrol?

20 MS. HOLMES: Well, let's stick with the
21 training question. Did you raise this concern
22 about the professional qualifications of the
23 biologist that was going to review the BRMIMP?

24 MR. BAYSINGER: No I did not.

25 MS. HOLMES: Did you raise this concern

1 about the qualifications of the traffic expert
2 who's going to review the traffic control plan?

3 MR. BAYSINGER: No.

4 MS. HOLMES: And again, let's move on to
5 the conflict of interest issue. Are you aware of
6 whether or not there are standards governing
7 conflict of interest of state employees and their
8 contractors?

9 MR. BAYSINGER: Not specifically aware.

10 MS. HOLMES: Okay, thank you. If I
11 understand, your third issue has to do with
12 stopping construction over disagreement over the
13 operating plan. We had changed the language from
14 what was in the original FSA to 47 to require that
15 the operational security plan -- I'll pull it up
16 -- be --

17 MR. HARRIS: What page please?

18 MS. HOLMES: I'm sorry, page 13 of
19 exhibit 47 -- or at least on this version it's
20 page 13. I don't think that's -- let me find it
21 in the exhibit, it'll be easier for people to
22 follow. We've got so many documents, we're going
23 back and forth. It is page 13, I stand corrected.

24 It says "at least 60 days prior to the
25 initial onsite receipt of hazardous materials, a

1 site specific operation security plan shall be
2 developed and implemented." Do you have an
3 objection to implementing a security plan prior to
4 the receipt of hazardous materials?

5 MR. BAYSINGER: Well, there is a
6 security plan in effect at that time, because we
7 have a construction security plan in effect.

8 MS. HOLMES: But it's not going to be
9 covering the hazardous materials that are used for
10 operations, is it?

11 MR. BAYSINGER: It could.

12 MS. HOLMES: Is it required to?

13 MR. BAYSINGER: Your requirement may not
14 have it.

15 MS. HOLMES: So what -- let me
16 paraphrase then -- is what you're saying that you
17 want the hazardous materials issues to be covered
18 in the construction?

19 MR. BAYSINGER: No I do not.

20 MS. HOLMES: Okay, thank you. You
21 referred to the development of a rulemaking to
22 address security issues. Can you tell me what a
23 regulation would look like, generally speaking,
24 that would apply equally to a 1,200 megawatt
25 facility in San Francisco that uses anhydrous

1 ammonia, and a facility in Modoc County that was
2 100 megawatts that used anhydrous ammonia?

3 MR. HARRIS: Can I ask you to break the
4 question down a little bit? Start with maybe one
5 city, or --?

6 MS. HOLMES: I'm asking him what the
7 results of a rulemaking, whether it's one
8 regulation or more, would look like that would
9 addresses that broad range of possibilities.

10 MR. HARRIS: A rulemaking on security
11 issues?

12 MS. HOLMES: The rulemaking he's
13 requested.

14 MR. BAYSINGER: Rulemaking can take on
15 various forms.

16 MS. HOLMES: I'm asking you what kind of
17 rule that would come out of a rulemaking, would be
18 equally applicable to the broad range of
19 facilities that could come before the Commission?

20 MR. BAYSINGER: A rulemaking that would
21 have specific guidelines and processes to be used.
22 And obviously there's got to be some exit ramps
23 that say "if it doesn't apply to this site, then
24 it doesn't apply to that site" but there's a
25 general menu or criteria of guidelines and

1 processes and procedures.

2 MS. HOLMES: Would the rule look very
3 much different from com 8?

4 MR. BAYSINGER: I don't know, I'm not
5 involved in the rulemaking.

6 MS. HOLMES: Thank you. I don't know if
7 this is an appropriate question to ask this
8 witness or not, it has to do with his fifth
9 concern on due process, and I'll start, and Jeff,
10 if you think it's a legal answer you can answer
11 when we do our oral argument.

12 Which specific provisions of the
13 security plan proposed by staff would create due
14 process issues?

15 MR. HARRIS: I think it is a legal
16 question, probably one that I -- I mean, if the
17 witness knows he can answer, I don't have any
18 objection to that, but I think it is a legal
19 question. I think you just gave me my objection,
20 and I just feel for Mr. Valkosky there.

21 (laughter)

22 MR. VALKOSKY: Well, I heard a couple of
23 different things going. One, there's no problem
24 if the witness knows, yes it is fundamentally a
25 legal issue. Mr. Baysinger, answer to the extent

1 that you know.

2 MR. BAYSINGER: I'm not an attorney.

3 MR. VALKOSKY: Okay, that's fine.

4 MR. HARRIS: That's the best answer of
5 the day.

6 MS. HOLMES: I think that's it.

7 MR. VALKOSKY: Redirect?

8 MR. HARRIS: Actually, can I have two
9 minutes. I'd just like to consult with Mr.
10 Wheatland, if I could.

11 MR. VALKOSKY: Would you prefer a five
12 minute recess?

13 MR. HARRIS: Yes, actually it might be
14 good to take a bio break.

15 MR. VALKOSKY: We'll reconvene by 11:30.
16 (Off the record.)

17 MR. VALKOSKY: Back on the record. Are
18 you ready, Jeff? Mr. Harris.

19 MR. HARRIS: Two brief areas for
20 redirect. First one, Mr. Baysinger, Ms. Holmes
21 asked you about your individual qualifications and
22 training experience. My question to you is do you
23 -- let's talk about real world experience. Do you
24 hire folks to help you do this kind of analysis?

25 MR. BAYSINGER: Yes we do. We hire

1 consultants that are experienced in the, you know,
2 security assessment security vulnerability world
3 to consult with us and work with us on the plans.
4 And beyond that, while I may not have taken a
5 class, I do have some pretty extensive real world
6 experience.

7 I've been responsible for security and
8 safety of our facilities for, at least since 2000
9 in generation, and in my time as lead designer I
10 designed security measures for our substations and
11 what not. I do meet with the local agencies, the
12 police, sheriff and FBI, on an ongoing basis.

13 MR. HARRIS: And you rely on those law
14 enforcement agencies for their expertise?

15 MR. BAYSINGER: For their expertise and
16 guidance, absolutely.

17 MR. HARRIS: Don't you have a prison
18 next to one of your facilities?

19 MR. BAYSINGER: At our Almond Power
20 Plant that was built. It's next to a maximum
21 security men's and women's prison, and when we
22 were under construction we worked with not only
23 the sheriff's department but the police department
24 in what considerations we may have to not only
25 protect ourselves -- we were claiming that the

1 sheriff wasn't allowing them to escape -- but they
2 wanted to see in a facility that was so close to a
3 prison.

4 MR. HARRIS: So in that process you
5 essentially had a collaborative process with local
6 law enforcement and with your own retained hired
7 experts, is that correct?

8 MR. BAYSINGER: Yes we did.

9 MR. HARRIS: The second area I wanted to
10 turn to, Mr. Valkosky asked you whether the
11 previous six cases were decided wrong, and I think
12 you diplomatically then dodged that question, but
13 I do want to go there though, and ask you if
14 there's anything different or special about the
15 district in your view, in connection with the
16 security issue?

17 MR. BAYSINGER: Well, as I say, I don't
18 know what those other six applicants were, but we
19 are a public agency and we are required by law to
20 provide security and safety at our facilities.

21 So what this plan essentially is doing
22 is adding another layer of approval and another
23 level of approval and that we are already required
24 by law to provide this service and this feature.

25 Basically, I guess we feel that the

1 approval should reside with the agency, or with
2 the ultimate responsible person, and we are the
3 ultimate responsible entity here.

4 MR. HARRIS: I have no more questions.

5 MR. VALKOSKY: Okay, just one question.
6 I understand your point, Mr. Baysinger, but assume
7 that I'm correct in believing that the Applicant
8 in the Pico case was also a public agency. Are
9 you contending that your public agency somehow
10 differs from that public agency?

11 MR. BAYSINGER: Well, to cut some fine
12 lines, they are a city, and we are an irrigation
13 district. I don't know that that makes any
14 difference. I also don't know what their issues
15 were, and why they accepted and why they chose not
16 to fight, if they did choose not to fight. I'm
17 not familiar with that case. I don't know what
18 went into their thought process in accepting that
19 condition.

20 MR. VALKOSKY: Okay, thank you.

21 Recross?

22 MS. HOLMES: Just one question, one or
23 two questions along the same lines. What do you
24 see as the distinction between your situation and
25 that of the Sacramento Municipal Utility District,

1 which was also recently granted certification to
2 build a large power plant?

3 MR. BAYSINGER: Probably a small
4 distinction, they're a MUD, a municipal utility
5 district, and we're a water agency, so we operate
6 under different sections of the state code. I
7 don't know that there's any big distinction there,
8 but there is a distinction.

9 MS. HOLMES: Does it create a
10 distinction in the area of security?

11 MR. BAYSINGER: I don't know. Their
12 facility is also next to a nuclear power plant,
13 which obviously has its own security deal. So I
14 think, while we may not be as wholly different as
15 a public agency, they've got a whole different
16 site.

17 MS. HOLMES: Would you say that they
18 have a site with a higher level of concern, given
19 the presence of Rancho Seco?

20 MR. BAYSINGER: Well --

21 MR. HARRIS: Would you clarify that
22 question?

23 MS. HOLMES: He asked for clarification
24 which I will now offer. Given the existence of
25 the Rancho Seco nuclear power plant in close

1 proximity to the SMUD-Cosumnes River project,
2 would you say that that creates a higher level of
3 security concern than would be the case for your
4 project?

5 MR. BAYSINGER: Actually, I could
6 probably argue it both ways, given the fact that
7 it is ia nuclear power plant they've got an
8 immense amount of security already there. So
9 that's not a bad place to build a plant, next to
10 something that's so well-protected.

11 MS. HOLMES: Do you know whether or not
12 they objected to staff and the Commission having
13 approval over their security plans?

14 MR. BAYSINGER: I do not know.

15 MR. VALKOSKY: Mr. Harris?

16 MR. HARRIS: I'd like to move Mr.
17 Baysinger's documents into evidence.

18 MR. VALKOSKY: Is there any objection?

19 MS. HOLMES: No objections.

20 MR. VALKOSKY: With that, those
21 documents will be received. At this time, Mr.
22 Harris, have you moved all of your documents into
23 evidence?

24 MR. HARRIS: You know, I would like to
25 move all of our group two testimony, in case we

1 happen to miss something. And that's exhibit
2 number 35 -- I'm sorry, 45. I'd like to move all
3 of 45, although I think we've got it all, in case
4 we missed anything, I'd like to move it in it's
5 entirety.

6 MR. VALKOSKY: And I take it that motion
7 would extend to exhibit one and two?

8 MR. HARRIS: Exhibit one, exhibit two as
9 well, exhibit three is also our group A testimony.
10 Exhibit four, our declarations, five and six were
11 data responses -- maybe I should just do it as a
12 global motion.

13 To the extent any of our items have been
14 identified and have not been moved into evidence,
15 I would move the remainder of those items into
16 evidence, and would support staff in making a
17 similar motion.

18 MR. VALKOSKY: Ms. Holmes, any global
19 objections?

20 MS. HOLMES: No.

21 MR. VALKOSKY: Thank you. Ms. Holmes,
22 in presenting your direct I'd also like to have
23 your witness address how the proposal in exhibit
24 47 differs from the last cases adopted by the
25 Commission -- specifically SMUD, Magnolia,

1 Palomar, East Altamont and Pico -- as well as how
2 it differs, or may not differ from the staff
3 testimony presented in Tesla last month.

4 So, if you could have your witness
5 approve that I would appreciate it.

6 MS. HOLMES: Luckily I can.

7 MR. VALKOSKY: Would you like to have
8 your witness sworn?

9 MS. HOLMES: Thank you. Let me take
10 care of a procedural matter first. I don't think
11 there's any controversy over Mr. Shaw's portion of
12 testimony, and so I think that probably we can
13 accept his portions, which is everything but com
14 8, by that declaration.

15 And then just have Dr. Greenberg sworn,
16 unless there's an objection to that.

17 MR. HARRIS: No, we don't object.

18 MR. VALKOSKY: The Committee has no
19 questions for Mr. Shaw.

20 MS. HOLMES: Thank you. The testimony
21 entitled "general conditions including compliance
22 monitoring and closure plan" in exhibit 11, aside
23 from com 8, was sponsored by Mr. Lance Shaw.
24 There is a statement of his qualifications
25 contained in exhibit 11, as well as a declaration.

1 So I'd like to move that that portion be
2 admitted into evidence, and then we're just left
3 with the portion that Dr. Greenberg is sponsoring.

4 MR. VALKOSKY: Is there objection?

5 MR. HARRIS: No objection.

6 MR. VALKOSKY: Document's admitted.
7 proceed.

8 MS. HOLMES: Thank you. Then what I
9 need to do next is call Dr. Greenberg and have him
10 sworn.
11 Whereupon,

12 ALVIN GREENBERG
13 was called as a witness herein, and after first
14 having been duly sworn, was examined and testified
15 as follows:

16 MS. HOLMES: Could you state your name
17 for the record please?

18 MR. GREENBERG: Alvin J. Greenberg.

19 MS. HOLMES: Thank you. Dr. Greenberg,
20 did you prepare the testimony with respect to com
21 8 that is contained in exhibits 11, 47, and 55?

22 MR. GREENBERG: Yes -- I had to get the
23 numbers straight, yes.

24 MR. VALKOSKY: Is there in fact com 8
25 testimony in exhibit 55? I thought it was just --

1 MS. HOLMES: You're correct, there is no
2 com 8, so exhibit 11 and 47. Thank you.

3 MR. GREENBERG: Yes, that's why --

4 MS. HOLMES: See, we're all confused
5 about the numbers. It's getting too close to
6 lunch. Dr. Greenberg, I don't believe that a
7 statement of your qualifications was attached to
8 exhibit 47. Could you please summarize your
9 qualifications at this point?

10 MR. GREENBERG: Yes, and I will try to
11 keep the focus on my security experience, other
12 than of course to mention that I have over 22
13 years experience in the field of risk assessment.

14 And risk assessment and vulnerability
15 assessments -- a vulnerability assessment is for a
16 security issue -- risk assessment and
17 vulnerability assessment are essentially the same
18 thing. And so the fact that I have over two
19 decades experience in risk assessment is directly
20 relevant and pertinent to the issue of
21 vulnerability assessment.

22 Ever since the unfortunate events of
23 9/11 I have been the lead person for the
24 California Energy Commission in addressing the
25 issue of power plant security. Towards that I

1 have received training and experience, and have
2 developed a model power plant/security plant, and
3 model vulnerability assessment for the California
4 Energy Commission.

5 I have interfaced and spoken personally
6 face-to-face with individuals from the CIA, the
7 Office of Homeland Security, the Army Corps of
8 Engineers, the U.S. Coast Guard, representatives
9 from Attorney General Bill Lockyer's office, a
10 representative from the California Office of
11 Emergency Services, and a Lieutenant from the
12 California National Guard, all of whom are
13 involved in infrastructure security concerns in
14 the United States and specifically in California.

15 I've also attend various seminars and
16 workshops addressing security issues and
17 vulnerability assessments. And I have been
18 trained by the company known as SB Security, Ltd.,
19 of the country of Israel.

20 Actually, that's the English
21 translation. The Hebrew name of the company is
22 Smira U Bituchon. Smira means guardian, and
23 Bituchon means security. This is Israel's oldest
24 security firm, established in 1934, which is prior
25 to the formation of the state of Israel, as the

1 grandfather of the present owner supplied security
2 guards to the British, who then ran and controlled
3 Palestine.

4 The company, SB Security Ltd. in Israel,
5 is comprised of individuals who all have had
6 extensive security training in the Israeli
7 military. They have all also served in either the
8 Israeli equivalent of the FBI, an agency known as
9 Shin Bet -- you may have heard of that -- and also
10 many of them served in the Israeli equivalent of
11 the U.S. CIA known as the Mossad.

12 Indeed, the person who assisted me in a
13 two-day extensive training course that we gave
14 this past July to California Energy Commission
15 staff is a full Colonel in the Israeli Army
16 reserve. And if you understand the Israeli
17 military situation, it's universal military
18 service, and a reserve officer serves actively at
19 least a minimum of 30 days every year.

20 So he is a full Colonel in the Israeli
21 Army. He is also a world-renowned international
22 expert in anti-terrorism and security matters,
23 having worked for El Al Airlines. He was an
24 attache in London for El Al. He also served in
25 the Mossad.

1 And he was the individual who United
2 Airlines and American Airlines brought to the
3 United States immediately after 9/11, and had him
4 review their security at airports such as SFO,
5 LAX, Washington-Dulles, and Chicago's O'Hare.

6 So he was here for two days in July
7 giving CEC staff training, along with myself, on
8 security matters, which did indeed include a mock
9 terrorist attack on a power plant here in the
10 Sacramento area -- a power plant that has to
11 remain confidential. So we had onsite, hands-on
12 training of CEC staff.

13 Is that long enough?

14 MS. HOLMES: Thank you. Do you have any
15 corrections to make to your testimony, I believe
16 there was a typographical error on page 13?

17 MR. GREENBERG: Yes, thank you. On page
18 13, if we look at the first, second, and third
19 paragraph after listing all the conditions of
20 certification which require review and approval of
21 various plans or documents, you'll see two lines
22 down from there kind of in the middle of the
23 paragraph, and it begins "the Energy Commission
24 does not have a single written standard describing
25 how these 27 requirements" -- that 27 should be

1 25.

2 MS. HOLMES: Thank you. And with that
3 correction are the facts contained in your
4 testimony true and correct to the best of your
5 knowledge?

6 MR. GREENBERG: Yes.

7 MS. HOLMES: And do the opinions
8 contained in your testimony represent your best
9 professional judgment?

10 MR. GREENBERG: Yes.

11 MS. HOLMES: Could you please provide a
12 brief summary of your testimony, and when you are
13 done I'm going to ask you two or three questions
14 relating to the areas of interest expressed by the
15 Committee. So please begin with a brief summary
16 of your testimony.

17 MR. GREENBERG: And I hope also that I
18 respond to the questions raised by the Hearing
19 Officer in my brief review of my testimony.

20 The version of com 8 that is contained
21 in exhibit 47 is essentially the same version, but
22 written in a different format, as other versions
23 of com 8 that have been approved in other siting
24 cases. It is written differently primarily at the
25 request of the Applicant because the Applicant did

1 bring up some valid points about clarity, and we
2 always want to write a clear condition of
3 certification.

4 But just as important, this version
5 before you reflects a natural progression of
6 refinement in a rapidly evolving area of
7 infrastructure security. In other words staff
8 always wants to present to you and to the
9 Applicant the best that we have available, and we
10 recognize that there are evolving issues that are
11 available for us.

12 For example, if you turn to page 15, the
13 top of page 15 of exhibit 47, item number 12 --
14 for the past year in my testimony at other siting
15 cases I had informed the siting committee that the
16 US Department of Transportation was preparing
17 rules and regulations addressing the security of
18 the transportation of hazardous materials.

19 The US Department of Transportation did
20 indeed do so, and therefore the latest versions of
21 com 8 include wording such as this, where the
22 Energy Commission wants to ensure that those
23 requirements found in 49C at bar 172800, and 49C
24 at bar 1572, sub-parts A and B are indeed complied
25 with.

1 When there is a federal mandate or
2 federal directive that would supersede a state
3 initiative, we would defer to that. And in this
4 case, when it comes to hazardous materials
5 transportation, we were waiting and we were
6 rewarded, and indeed that's why we knew that this
7 you would not find in com 8, say for the SMUD
8 project, but you will find this hopefully in
9 Tesla.

10 So that's an example of the evolution,
11 and we also wanted to be responsive to the
12 Applicant. The major issue, it appears to me, is
13 the approval issue. I'll let Ms. Holmes speak to
14 the Applicant's claim that the California Energy
15 Commission lacks authority, to me that appears to
16 be a legal issue, but when it comes to the
17 expertise to review and approve the security
18 plans, I would simply like to point out my
19 experience and also the experience of my Israeli
20 partners, and how we are imparting that experience
21 and that training to Energy commission staff
22 members.

23 So I want to reassure the Applicant that
24 we take this very seriously. And in fact we take
25 it more seriously than we do all those other

1 conditions of certification, all 25 of them, that
2 require review and approval, and we want to ensure
3 and assure you that there will be properly trained
4 individuals that will come in and review and
5 approve your security plan.

6 And I would also like to say that I
7 welcome the opportunity, as offered by the
8 Applicant, to sit with them prior to the -- as he
9 put it, the end of the day.

10 Staff would be very willing to start at
11 the various beginning. In fact, we do have a
12 model power plant/security plant, and
13 vulnerability assessment methodology specific for
14 gas-fired power plants, that is still under
15 consideration by management. And there does have
16 to be some review and revision to that.

17 But it would be out long before this
18 particular Applicant would need such guidance.
19 Their experience with FERC, the Federal Energy
20 Regulatory Commission, is good to have, and we
21 applaud them that they have that experience. But
22 the vulnerability assessment methodology for
23 assessing security needs at a hydroelectric
24 facility is far different than that for a gas-
25 fired power plant.

1 There is just a one line statement about
2 hazardous materials in the Ram D methodology, risk
3 assessment methodology for dams, because you don't
4 really have a lot of hazardous materials, you
5 don't have 9,000 gallons or 10,000 gallons of
6 anhydrous ammonia stored there, so it's really a
7 different issue. And it's very important that the
8 methodology that they use is appropriate for the
9 facility.

10 On November 18th, 2002, the Federal
11 Energy Regulatory Commission issued a summary of
12 licensing security requirements and clarification
13 of those requirements, and in those requirements
14 they stated quite clearly that the FERC engineers
15 will determine, will determine -- my emphasis --
16 if reasonable security measures are in place at
17 high and significant hazard potential dams -- and
18 Don Pedro is one of those.

19 And they will identify where additional
20 security enhancements are necessary. Well, that
21 sounds like review and approval to me, when you
22 come out and you make a determination and then you
23 tell them hey, you've got to do something
24 different.

25 So they are already sitting under a

1 requirement to provide something and have it
2 reviewed and determined if it's adequate by a
3 federal agency. I am really at a loss as to why
4 they do not want the California Energy Commission
5 to exercise the very same type of review and
6 determination and approval authority, and again
7 I'll let Ms. Holmes speak to the legality of the
8 authorization of that.

9 MR. HARRIS: I need to interrupt for a
10 second. I don't have that document, it wasn't a
11 part of the prefile testimony, so I think you've
12 made the point and you're moving off it. Could we
13 have a copy of that?

14 MS. HOLMES: You can have a copy of it.
15 I debated the question of whether I should ask for
16 official notice of the document when we got into
17 the discussion earlier with Mr. Baysinger about
18 whether or not FERC approved these plans or not, I
19 didn't want to waste a lot of Committee time with
20 it.

21 So I can provide this copy to Mr. Harris
22 if that solves the problem.

23 MR. HARRIS: Well, my problem is, Dr.
24 Greenburg has provided testimony about whether
25 FERC approves, and made a statement about that

1 determination, so --

2 MS. HOLMES: We weren't aware that this
3 issue was going to come up, because, since having
4 read the document we assumed that when we asked
5 the question to Mr. Baysinger the answer would be
6 yes. Since he answered no we have provided you
7 with a copy of the document.

8 MR. HARRIS: I'm sure Mr. Baysinger has
9 seen this document before, I mean --

10 MR. BAYSINGER: Well, yes, I'm --

11 MR. HARRIS: I'm going to allow us to
12 move forward. To the extent there's a legal
13 conclusion by Mr. Greenberg about what determine
14 means, I would object to that. But we could, I'll
15 just leave it at that.

16 MR. VALKOSKY: Yeah, I think this is
17 very appropriate from reading it. Continue.

18 MR. GREENBERG: Okay, as far as
19 standards of approval and expertise, I've made my
20 point in my written comments in exhibit 47, that
21 the Applicant seems to be only objecting to this
22 condition of certification, and yet the changes
23 that we are offering here.

24 For example, in exhibit 37, page 14,
25 first paragraph, "only Energy Commission personnel

1 who have proper training and proper security
2 clearance, as determined by the Energy Commission
3 after consultation with the project owner, shall
4 review and approve the plan."

5 I believe that this is something that
6 will satisfy the Applicant, where they will have
7 input --- and it's usually they don't, certainly
8 not on the other 25 conditions of certification
9 that require review and approval -- not veto
10 power, it's inappropriate for them to have veto
11 power, but they would have input, and it shows our
12 willingness to listen to them, because we think
13 that an Applicant and the owner of a power plant
14 has a perspective that we're very much interested
15 in.

16 But the key here is that the Energy
17 Commission will determine what the training should
18 be. Training has already commenced, and there
19 will be further training. And of course what the
20 security clearance would be, and as we all know
21 the Energy Commission has certain security
22 clearance, at least a low level of security
23 clearance, to get in this building or even be
24 hired as a state employee.

25 Furthermore, the Bush Administration

1 announced, just two weeks ago, that they have
2 established a master terror watch list. This is a
3 list that's compiled by the CIA and the FBI, and
4 I'll just quote from the New York Times news
5 article describing this --

6 MR. HARRIS: This is again something I
7 haven't seen.

8 MR. GREENBERG: I'm sorry, I thought you
9 read the New York Times.

10 (laughter)

11 MR. HARRIS: Not on that day, but --

12 MR. GREENBERG: Well, it's my expert
13 testimony that this is available, and it's
14 something that we can use and you can use.

15 MS. HOLMES: For purposes of the
16 Committee why don't you explain what the list is,
17 and explain why this is the type of information
18 that the Energy Commission staff will use when
19 exercising it's review and approval authority on
20 com 8.

21 MR. GREENBERG: Well, the Attorney
22 General wanted to establish sort of a one stop
23 shopping list of any known or suspected
24 terrorists, so that someone wouldn't hire them as
25 airport screeners or power plant security guards,

1 or -- not to be funny or anything, but -- or as a
2 CEC employee who would go to a power plant and
3 inspect a power facility.

4 And the intent here is to make this list
5 available to federal agencies and state agencies.
6 Also, to private sector groups, and they
7 specifically mention two private sector groups,
8 "like airlines and energy plants."

9 They didn't mention any other private
10 sector groups except those two, and so I'm just
11 again trying to reassure the Applicant that we
12 intend to have properly credentialed and secure
13 individual review their security plans. We do
14 take this issue very seriously.

15 The timing of construction and operation
16 in security plans has been changed here in exhibit
17 47 to ensure that there is a site-specific
18 construction security plan, and that would be in
19 effect 30 days prior to construction, and that 60
20 days prior to the initial onsite receipt of
21 hazardous materials there would be an operations
22 security plan.

23 It is very important tha the operation
24 security plan be implemented and in place prior to
25 the receipt of acutely hazardous materials, and --

1 I think it's self-evident why that's important.

2 So I think, again, we're responsive and
3 we've addressed their concern about the timing of
4 construction and onsite plans, and if they invite
5 us to work with them in the development of these
6 plans we certainly don't see that there would be
7 any delay in having these plants completed, when
8 there is that type of teamwork involved.

9 As far as generalized rulemaking is
10 concerned, that they've asked for, I'm sure that
11 the applicant is aware that having a rulemaking
12 procedure as the only procedure by which the
13 Energy Commission would adopt a model or generic
14 approach to security plans could in and of itself
15 present certain problems and certain security
16 problems.

17 That is why staff wants to give the
18 Commission options of whether it be a general
19 rulemaking approach or, if you go to page 15, the
20 first full paragraph after numbers 11 ad 12,
21 "subject to the Commission's future rulemaking or
22 other action."

23 That gives the flexibility to the
24 Commission to take other action, but we go on
25 further to say that, whatever that action is, that

1 power plant owners would have an opportunity to
2 review and comment on these guidelines.

3 Once again, we need to understand here
4 that the last thing anybody wants to do is have a
5 massive public hearing where we release our model
6 security plan and vulnerability assessment and
7 broadcast it on the Internet so that anybody who
8 may want to do harm to the state of California and
9 the people of California knows how we're thinking
10 about security, but we certainly want to have the
11 input of power plant owners and applicants in
12 developing that, and we want to give the
13 flexibility to the Commission about how they do
14 that.

15 And that's why we're willing to put in
16 such language that would bind us to getting your
17 input on development of such a generic plan. That
18 is what is currently in draft form now, a generic
19 plan that could address the situation of a 1,200
20 megawatt power plant in San Francisco versus a 200
21 megawatt power plant out in Modoc County, where
22 there is a vulnerability assessment -- which is
23 the key to security -- where a vulnerability
24 assessment matrix, as you go through that matrix
25 and you come up with a score you then use that

1 score to dictate what level of security you have.

2 That leads to the final comment, in
3 conclusion, of how we have 12 issues here in the
4 operations security plan. Not 12 issues, but 12
5 measures, which, we want them addressed.

6 And we don't know how they would address
7 them, because it's based on the vulnerability
8 assessment matrix score, which is determined in
9 part by what acutely hazardous materials are
10 present, or other hazardous materials, as we
11 define there on page 14 right under operations
12 security plan.

13 Just as an aside, before I wind up, the
14 use of the term "specialized industrial chemicals"
15 is viewed upon with disfavor by staff. I don't
16 think it's a good idea to introduce a new word.
17 It's not used in any federal regulation or state
18 regulation addressing hazardous materials.

19 We're all aware of the term "acutely
20 hazardous materials." We're aware of terms
21 "corrosive", we're aware of terms such as
22 "poisonous by inhalation." I don't think it's
23 useful to coin another term.

24 But rather, it's useful -- as I've
25 stated here in my testimony -- that we're

1 concerned about acutely hazardous materials,
2 hydrogen gas, any liquefied petroleum fuels that
3 might be present there, and sulfuric acid in
4 concentrations greater than a certain percent, as
5 listed here.

6 And any material poisonous by inhalation
7 is defined by federal regulations, and we give the
8 section number there. There will be other
9 hazardous materials used in power plants, but by
10 virtue of their physical state, their low
11 volatility, their low volume, they won't pose a
12 hazard of an offsite consequence analysis which a
13 terrorist organization might look at, to follow
14 the paradigm of 9/11, which was to take a
15 transcontinental airplane that was fully loaded
16 with fuel, flying it into an airplane and using it
17 as a bomb.

18 What we're concerned about are not the
19 small amounts of every hazardous materials, but
20 the largest ones that raises the profile and also
21 raises the risk of an offsite consequence.

22 So I got sidetracked there, but these
23 items here, rather than say "you must do this
24 one", "you must do that one", we'd rather have
25 them address that. Some plants might have guards,

1 some plants might not need guards at all.

2 They may have a security gate, a low
3 level risk -- what we would call a category one or
4 level one power plant -- might not need guards at
5 the gate at all, but rather a key system, a tag
6 system, maybe a biometric system that's rapidly
7 evolving, where only certain individuals are
8 allowed in. But every power plant will most
9 likely need closed circuit televisions and perimeter
10 defenses, not just a fence but motion detectors or
11 passive infrared.

12 And so what we would like them to do is
13 address this based upon the vulnerability
14 assessment, looking at our guidelines that if
15 their vulnerability assessment score was a certain
16 level, then here's the level of security that we
17 would ask for.

18 But we're open to their arguments, or
19 their position. As we state here, "discuss the
20 following security measures, describe which
21 measures are planned, how they will be
22 implemented." We're open to their expertise on
23 the matter as well, but we do want to reserve the
24 right to review and approve it.

25 I hope I answered the Hearing Officer's

1 question.

2 MS. HOLMES: You also answered all of
3 mine. So with that I will make the witness
4 available for cross-examination.

5 MR. VALKOSKY: Just a couple more, Dr.
6 Greenberg. Did I hear you mention the fact that
7 the staff is in the process of developing a model
8 security plan?

9 MR. GREENBERG: That's correct.

10 MR. VALKOSKY: When would that likely be
11 finalized, so it can be distributed to the
12 Applicants?

13 MR. GREENBERG: I -- excuse me for
14 interrupting. I'm not management, I'm just the guy
15 who is developing it, so you'll have to ask
16 management on that one.

17 MR. VALKOSKY: Okay, but you don't have
18 any independent knowledge of that?

19 MR. GREENBERG: No I don't.

20 MR. VALKOSKY: But it is your belief
21 that it would be finalized before this project
22 were certified?

23 MR. GREENBERG: Oh, I hope so. I'm
24 hoping, certainly in the next three or four
25 months, but I can't state that.

1 MR. VALKOSKY: I'm sure Applicant is
2 hoping that this project will be over the next
3 three or four months.

4 COMMISSIONER BOYD: We were looking for
5 a different answer there.

6 MR. VALKOSKY: The Committee is not
7 guaranteeing anything. On page -- I'd like to
8 direct you to pages 45 and 46 of Mr. Baysinger's
9 testimony. On page 46 there is a statement, under
10 the heading "vulnerability assessment" that the
11 Applicant believes that these revisions are
12 acceptable to staff.

13 Is that in fact the case?

14 MR. GREENBERG: I believe I said, not
15 really. Because they like to use a newly coined
16 term, "specialized industrial materials", and in
17 my testimony, exhibit 47, I list the ones -- and
18 that's consistent with what I've done in other
19 siting projects.

20 So rather than saying specialized
21 industrial materials, let's come right out and say
22 these are the ones we're concerned about. And I'm
23 hopeful that the Applicant will agree, we're
24 talking about the same thing here.

25 MR. VALKOSKY: Okay, with the exception

1 of specialized industrial materials in your
2 listing, the other language is essentially the
3 same as contained in your version?

4 MR. GREENBERG: It's, about the only
5 thing I can say is that I'd like to have it moved
6 up front. I moved it up front so that it --

7 MR. VALKOSKY: Okay, so that's really
8 just an editorial choice. Okay.

9 MR. GREENBERG: Let me see if there's
10 something else. They are missing Energy
11 Commission guidelines. Consistent with USEPA and
12 US Department of Justice guidelines, rather than
13 saying CEC guidelines.

14 MR. VALKOSKY: Okay, the bottom line
15 then, if I understand you, is that you would not
16 recommend adoption of this language, as contained
17 on page 46?

18 MR. GREENBERG: Exactly the way it is,
19 no.

20 MR. VALKOSKY: Okay, thank you. Going
21 to items five and six on page 43 -- or on page 45,
22 depending on if it's the annotated version or not.
23 And we're talking mostly about personlle
24 background checks. As I understand this,
25 Applicant wants to provide a description of the

1 checks and the process used. Does this differ
2 from what staff has --?

3 MR. GREENBERG: Just slightly. We have
4 added the term "routine onsite contractors." The
5 Applicant's testimony would limit it to just their
6 employees, and certainly our experience -- I mean,
7 when we go to a power plant we see maybe a handful
8 of employees and a whole lot of contractors, and
9 that these contractors are actually there for
10 quite long periods of time.

11 We're not talking about the ones that
12 may just come in and out for that particular day.
13 But there are contractors at power plants that are
14 there for weeks and months at a time.

15 MR. VALKOSKY: Okay, so that's a
16 fundamental difference between the two versions.

17 MR. GREENBERG: Yes.

18 MR. HARRIS: Mr. Valkosky, if I could, I
19 don't think it is a difference. We said "site
20 personnel" and I intended that to mean both our
21 direct employees and our contractors. Dr.
22 Greenberg is correct, a lot of the folks working
23 there would be contract employees and not TID
24 employees, so --

25 MR. VALKOSKY: So effectively then there

1 is no difference.

2 MR. HARRIS: Well, I'll ask the
3 questions later, I'm not sure -- how routine is
4 routine I guess is the question I have.

5 MR. VALKOSKY: Okay, we'll wait until
6 your cross then.

7 MR. HARRIS: Thanks.

8 MR. VALKOSKY: Finally, Dr. Greenberg,
9 you indicated that the version of com 8 contained
10 in exhibit 47 is essentially an evolution from
11 other compliance plans adopted in recent cases?

12 MR. GREENBERG: Yes, sir.

13 MR. VALKOSKY: Am I correct that in
14 those prior cases staff approval was required?

15 MR. GREENBERG: In all cases.

16 MR. VALKOSKY: Okay, thank you. And
17 finally, and this is for your information, your
18 number 12 on page 15, at least to my
19 understanding, does not appear in the FSA for
20 Tesla, which was submitted last month.

21 MR. GREENBERG: Whoops, it should have
22 been.

23 MR. VALKOSKY: Well, I'm -- there are
24 some distinctions, but for this Committee's
25 purposes we are just to rely on exhibit 47 as the

1 final evolution. At least that is our
2 understanding. Mr. Harris, cross-examination?

3 MR. HARRIS: Yes, thank you. I may jump
4 around a bit, Dr. Greenberg, I've got notes here
5 and here and here, and new things that I'm having
6 Mr. Wheatlnad take a look at. So bear with me if
7 you will.

8 Actually, along the lines of the
9 question just asked, is the com 8 in the final
10 staff assessment -- let's go first, you had a com
11 8 version in the PSA, is that correct?

12 MR. GREENBERG: Yes.

13 MR. HARRIS: Is that the exact same
14 version that was in the final staff assessment, or
15 did it evolve?

16 MR. GREENBERG: You know, I'd have to
17 refresh my memory. Sorry, I can't recall.

18 MR. HARRIS: So you're not certain if it
19 changed from PSA to FSA?

20 MR. GREENBERG: I can't recall.

21 MR. HARRIS: It changed from FSA to
22 addendum, is that correct?

23 MR. GREENBERG: That is correct.

24 MR. HARRIS: So this is part of the
25 evolution you're talking about. How many projects

1 have you worked on in, say, the last year and a
2 half, at the Energy Commission, related to
3 security plans?

4 MR. GREENBERG: Seven or eight.

5 MR. HARRIS: Which projects were those?

6 MR. GREENBERG: Oh, boy. SMUD, Tesla,
7 East Altamont, this one, I think we got it in -- I
8 think Magnolia we got it in there, and I think the
9 city of Vernon. There was one in, -- there was
10 also the one in Escondido, Palomar.

11 MR. HARRIS: Okay.

12 MR. GREENBERG: So let's see, that's up
13 to seven. Is that okay.

14 MR. HARRIS: Seven fairly recent
15 experiences there. Is the com 8 language, among
16 those seven projects, do any two of them have
17 exactly the same com 8 language, that you're aware
18 of?

19 MR. GREENBERG: You know, you're relying
20 on my memory of all these projects, so I'd have to
21 say I can't recall if they are exactly word for
22 word.

23 MR. HARRIS: Of the same you're not
24 aware of any two that have exactly the same
25 language?

1 MR. GREENBERG: That wasn't my
2 testimony.

3 MR. HARRIS: That was my question,
4 though. I'm sorry, if I mischaracterized I didn't
5 mean to mischaracterize, Alvin.

6 MR. GREENBERG: My testimony is I cannot
7 recall whether they were exactly the same. I can
8 recall that they all started out proposed by staff
9 exactly the same. We do and try and be flexible
10 when an Applicant asked for a change in wording
11 here and there.

12 MR. HARRIS: Thank you. I was genuinely
13 confused that time. The model plan you're working
14 on with staff, how will that be used? Let me be
15 more specific with the question. Will staff
16 develop the model plan, and then make it available
17 to power plant applicants?

18 MR. GREENBERG: Yes.

19 MR. HARRIS: So, what about the security
20 applications of putting that on the Internet. I
21 thought I heard you say that you were concerned
22 with that. Can you explain that?

23 MR. GREENBERG: Well, we're not planning
24 on putting it on the Internet.

25 MR. HARRIS: Will you make it available

1 to Applicant's alone?

2 MR. GREENBERG: Correct.

3 MR. HARRIS: And they will be required
4 to keep it confidential?

5 MR. GREENBERG: Yes.

6 MR. HARRIS: What if they have
7 disagreements about that model plan? How can they
8 express a disagreement if they think you're wrong?

9 MR. GREENBERG: Because your Applicant
10 is very familiar with the FERC proceedings, let me
11 tell you that our method is very similar to what
12 FERC has in place now.

13 That is, if a power plant applicant uses
14 our vulnerability assessment methodology, and
15 writes a power plant security plan consistent with
16 our guidelines, it's a presumption that the
17 thought process that went into preparing the
18 vulnerability assessment and the power plant
19 security plan is indeed appropriate, if you choose
20 to use something else or a variation of it, we
21 will then go and look and see what you did
22 differently, and look at the assumptions and the
23 thought process and the technical ability that
24 went into that. And I believe that's what FERC
25 does right now.

1 MR. HARRIS: So this model plan is
2 winding its way through management review, is that
3 correct?

4 MR. GREENBERG: That is correct.

5 MR. HARRIS: And is that an easy review
6 process, or have there been differing opinions
7 about what should go into such a plan?

8 MR. GREENBERG: How about if I answer
9 the last part. I don't know if anything is easy
10 or hard in state government, so I'll just answer
11 the last question. Of the reviewers, four have
12 pretty much accepted it as is, and then there's a
13 couple who had no comments, and there's one or two
14 who would like some modifications or revisions.

15 MR. HARRIS: Okay. Most sections of the
16 FSA staff will identify the applicable LORS. Are
17 there applicable LORS for com 8?

18 MR. GREENBERG: Yes I believe there are,
19 and they should have been included by Mr. Tyler in
20 the hazardous materials section. Certainly when
21 I've written hazardous materials management
22 sections I've included the applicable LORS, yes.

23 MR. HARRIS: So can you identify for us
24 those LORS that are --

25 MR. GREENBERG: Let me see if they're --

1 MS. HOLMES: I think you should just
2 refer to the, since he's not sponsoring the
3 hazardous materials testimony I think you should
4 just refer to that section of the testimony, which
5 has already been introduced into evidence. It's
6 part of the FSA exhibit two.

7 MR. HARRIS: So all the applicable LORS
8 are only in the hazardous materials section, is
9 that correct?

10 MR. GREENBERG: I have not written nor
11 reviewed the hazmat section for this particular
12 project. For projects where I'm responsible for
13 both they certainly are in the hazardous materials
14 section.

15 MR. HARRIS: Okay, and that's the
16 complete universe of all the applicable LORS that
17 are set forth in -- those LORS relate only to
18 hazardous materials, is that your testimony?

19 MR. GREENBERG: My testimony is that the
20 basis -- you're asking me as a technician, not an
21 attorney, right? So this is not, so I'm not
22 limiting Ms. Holmes from opining on further
23 authority. Just from my perspective, a section of
24 the statutes, the -- is the government, the Public
25 Resource Code?

1 MS. HOLMES: The Warren-Alquist Act,
2 Public Resources Code.

3 MR. GREENBERG: Okay. It does give
4 authority to the Energy Commission to essentially
5 protect the health and welfare and the safety of
6 the public of the state of California.

7 MR. HARRIS: Is it your understanding
8 that that section is directly related to security
9 plans?

10 MR. GREENBERG: Oh, it most certainly
11 is.

12 MS. HOLMES: If I could interrupt at
13 this point. That's an issue I'm happy to take up
14 on legal argument.

15 MR. VALKOSKY: Yes, I'm sure that'll be
16 addressed further.

17 MR. HARRIS: Are there applicable LORS
18 related to, say, maritime issues, that you've
19 taken into account in security plans, or are they
20 only hazardous materials?

21 MS. HOLMES: Again, are we talking
22 specifically about this plant? I'd like to keep,
23 if possible, the testimony limited to this plant.
24 Are you asking whether he took maritime LORS into
25 account in this project?

1 MR. HARRIS: Well, here's what I'm
2 trying to get to. Typically, in an FSA section,
3 there is a discussion of applicable LORS. This
4 testimony does not have that discussion. My
5 question is, please identify the applicable LORS?
6 And if the answer is you can't do it, then that's
7 fine.

8 MR. VALKOSKY: All right, maybe I can
9 shorten this. It is the Committee's understanding
10 that, under CEQA, an agency must ensure that it's
11 conditions are enforced. That's the purpose of
12 the compliance section, and the general
13 conditions.

14 The way that has traditionally been
15 interpreted is that means compliance with the
16 preceding 20 or 22 sections, which specify all
17 their LORS. Does anybody have any difference with
18 that opinion? Mr. Harris?

19 MR. HARRIS: I'm not sure I understand,
20 Mr. Valkosky?

21 MR. VALKOSKY: Okay. The compliance
22 section is limited essentially to the Commission's
23 required method of ensuring that it's conditions
24 are complied with. In doing that, the Commission
25 has never, to my knowledge, re-specified all these

1 LORS.

2 Rather, it's a derivative process, to
3 justify them in a section such as air quality, and
4 then it is assumed if it is not directly stated,
5 that compliance will be maintaining compliance
6 with those LORS directly, as specified in the air
7 quality provision. And I think that's where we
8 are here.

9 MR. HARRIS: I don't disagree with that
10 at all. I guess, my concern here is -- maybe I
11 should have said identify the LORS applicable to
12 com 8. There's actually a plan now being proposed
13 as part of com 8, and just as in the biological
14 section there would be a set of LORS on the plan
15 for the BRMIMP, I would expect there would be a
16 set of LORS for the plan on com 8.

17 So maybe my question should have been
18 please identify the LORS applicable to com 8?

19 MR. VALKOSKY: Okay, fine. Dr.
20 Greenberg, answer that question to the best of
21 your ability.

22 MR. GREENBERG: I'd have to rely on
23 counsel.

24 MR. HARRIS: Okay, so I should move on?

25 MS. HOLMES: Are you asking me for an

1 opinion?

2 (laughter)

3 MR. HARRIS: No I won't.

4 MS. HOLMES: Wise.

5 MR. HARRIS: I took wise to mean smart
6 there. Dr. Greenberg, on page 13 of your
7 testimony, you state that the Applicant is -- and
8 this is I believe in the paragraph that starts
9 "the Applicant also expressed concern...".

10 Second or third sentence, "the Applicant
11 is apparently unaware that the Energy Commission
12 has very broad authority to identify the
13 conditions necessary to ensure public safety
14 associated with the plants it licenses."

15 Please enlighten me, as I'm unaware.
16 What are those very broad authorities?

17 MS. HOLMES: Again, I would rather
18 address that during legal argument.

19 MR. VALKOSKY: Yes, I think that's
20 appropriate, unless there is something specific
21 that the witness is aware of that will not be
22 raised during the legal argument.

23 MR. GREENBERG: No, anything I have to
24 say will be raised much more eloquently by staff
25 counsel in the legal argument.

1 MR. HARRIS: Okay. Dr. Greenberg, you
2 also state in your testimony that the Commission
3 routinely handles confidential information
4 associated with the Public Record Act. These
5 regulations are designed to determine whether
6 information held by the Commission may or may not
7 be disclosed to the public. Is that your
8 understanding?

9 MR. GREENBERG: That's correct.

10 MR. HARRIS: Do these regulations also
11 provide guidance on how classified information may
12 or may not be disclosed to staff or consultants of
13 the Commission?

14 MS. HOLMES: Again, that's a question I
15 can address during legal argument. I was prepared
16 to address all the confidentiality procedures that
17 the Commission work.

18 MR. VALKOSKY: I'm sure you will, but to
19 the extent that the witness can answer yes or no I
20 think that's appropriate at this point.

21 MR. GREENBERG: I am aware of very
22 broad, but not specific, the very broad
23 confidentiality requirements as a contractor to
24 the California Energy Commission.

25 MR. HARRIS: Okay. You also state that

1 the Commission has extensive provisions guarding
2 against conflicts of interest. Where are these
3 provisions set forth?

4 MR. GREENBERG: Where precisely they are
5 set forth I do not know. I do know that I signed
6 a conflict of interest, or a declaration that I
7 have no conflicts of interest, as a contractor to
8 the Energy Commission.

9 Every single month I send in a report to
10 the Energy Commission. So I don't just sign -- I
11 signed upon signing a contract with the Energy
12 Commission, and then I sign it again every month
13 to make sure I have no conflicts of interest.

14 MR. HARRIS: Okay, thank you.

15 MR. GREENBERG: You're welcome.

16 MR. HARRIS: On page -- I think it's 13
17 of your testimony, you list 25 plans, not 27, you
18 made that correction?

19 MR. GREENBERG: Yes.

20 MR. HARRIS: Are you familiar with that
21 portion of your testimony?

22 MR. GREENBERG: Yes sir.

23 MR. HARRIS: Of those 25 plans, there
24 are some that are required to be submitted under
25 confidential cover related to paleo resources.

1 Are you aware of any other of the 25 plans that
2 are listed there that are required to be submitted
3 under confidential cover?

4 MR. GREENBERG: No, just the paleo, just
5 the ones you mentioned.

6 MR. HARRIS: So only the paleo one to
7 your knowledge, and that's required by statute,
8 isn't that correct?

9 MR. GREENBERG: That is correct.

10 MR. HARRIS: Of those 25 plans -- do you
11 need a copy of the 25, I may cut and past them in
12 a single file.

13 MR. GREENBERG: No, I have them.

14 MR. HARRIS: The document that is being
15 passed around right now is intended to be simply a
16 cut and past of the 25 conditions that are listed
17 in Dr. Greenberg's testimony as being
18 representative of areas where there is approval
19 authority.

20 It was our intent to simply cut and past
21 those out of the, either the staff addendum or the
22 staff assessment. I just put them together for
23 the convenience of Dr. Greenberg and for the
24 Committee.

25 So of those 25 plans you have now before

1 you, could you please point to one of those plans
2 that could be changed unilaterally by the CPM?

3 MS. HOLMES: I'm going to have to ask
4 for further clarification of that question.

5 MR. HARRIS: The question is can any of
6 the 25 plans that you have before you, once
7 they're submitted and approved, can they be
8 changed unilaterally by the CPM?

9 MR. GREENBERG: I'm a little bit
10 confused as to your question, and how relevant
11 that is to my testimony. I --

12 MR. HARRIS: Let me see if I can break
13 it down for you. Your testimony, at the very last
14 paragraph of your com 8, suggests that the plans,
15 once they are submitted, can be changed to deal
16 with industry concerns -- and I'll get to that
17 later.

18 Basically, after a plan has been
19 accepted, com 8, as written, allows that to be
20 unilaterally changed by the CPM. My question for
21 you is, of the 25 plans before you, do any of
22 those plans allow them to be unilaterally changed
23 by the CPM?

24 MR. GREENBERG: Sir, I think you're
25 mischaracterizing the intent of my testimony. I'm

1 not trying to say anything other than that the
2 requirements in com 8 may be changed, but not the
3 plan itself unilaterally, at this point. We will
4 review and approve it, and make suggestions.

5 So, maybe I'm still confused by what it
6 is you're getting at.

7 MR. HARRIS: Well, let's turn to your
8 testimony then, on page 15, that last paragraph.
9 If you'll take a look at that language in the
10 first sentence, it says "the CPM may authorize
11 modification to measures proposed by the project
12 owner, or may require -- require I take to be a
13 mandate, stronger than the determination -- may
14 require additional measures to those listed above,
15 depending upon the unique circumstances, the
16 unique facility, and/or in response to industry
17 related security concerns."

18 So the purpose of my question about the
19 25 was that I'm bringing that language to suggest
20 that the CPM may unilaterally change a security
21 plan based upon the conditions that you have
22 there. Have I misread that language?

23 MR. GREENBERG: No. Now that I fully
24 understand your question, my answer is that if you
25 would prefer not to have the ability to modify

1 these measures, because the whole sentence must be
2 taken in its entirety, where the project owner
3 gets to make recommendations for changing com 8
4 and also some of the requirements of com 8, or if
5 you would like to have us remove the ability to
6 respond to industry related security concerns,
7 then I'd be happy to remove that entire sentence
8 and you wouldn't then have to worry about the CPM
9 making any changes.

10 But the sentence has to be taken as a
11 whole to once again try and address -- to give you
12 flexibility and address the rapidly evolving
13 nature of security concerns in the United States.

14 I hope I'm responsive to your question,
15 because we're always caught between developing
16 specification standards, where we tell everybody
17 do one, two, three , four, five all the way
18 through 50; or, a performance based standard where
19 we say "prepare a vulnerability assessment and
20 security plan, and implement it."

21 And so we're trying to meet some middle
22 ground here. And so the direct answer to your
23 question is I'm not sure I could point out similar
24 flexible language in any of the other conditions
25 of certification, but if you object to that I'd be

1 happy to take that sentence out.

2 MR. HARRIS: So you'd be happy to strike
3 the entire sentence?

4 MR. GREENBERG: The entire sentence.
5 Which means the project owner would lose his
6 ability also. In other words the CPM wouldn't be
7 able to authorize modifications proposed by the
8 project owner. We think that that's important,
9 the ability to do that. But if you object to it,
10 I'm very willing to take that out.

11 MR. HARRIS: Well, let's explore that a
12 little bit then. Do you read this language to
13 suggest that if Mr. Baysinger wants to add a
14 couple of security guards for whatever reasons,
15 there's a gang activity in the area -- that he
16 can't do that without CPM approval?

17 MR. GREENBERG: No, I'm not saying that
18 at all.

19 MR. HARRIS: Okay, then what am I losing
20 if we lose this sentence?

21 MR. GREENBERG: Well, I think it's a
22 matter of degree. Let's just say -- take your
23 example of security guards. And let's say your
24 original plan is to have a security guard 24/7,
25 365 days a year.

1 And you come in and you propose that and
2 it's approved, and you find out after a couple of
3 years that the threat level has decreased and you
4 go to the CPM and you say, "you know, we don't
5 want guards 24/7, we've got some additional other
6 security measures, we feel more comfortable given
7 the threat assessment, we would like to decrease
8 the frequency of the guards."

9 CPM would have that authority under this
10 sentence. In other words, respond to a proposal
11 by the Applicant to modify what's there.

12 MR. HARRIS: But if Mr. Baysinger were
13 to reduce the security without having CPM approval
14 first, then that would be a non-compliance, is
15 that correct?

16 MR. GREENBERG: I think it cuts both
17 ways. Reducing, adding to, we're talking about a
18 partnership here. Let's talk with each other, and
19 again the CEC does want to have the ultimate
20 review and approval authority.

21 MR. HARRIS: Turning back to the list of
22 25 conditions you've referenced. Isn't it the
23 case that the Commission can generally provide you
24 with a model plan for those conditions?

25 MR. GREENBERG: Yes.

1 MR. HARRIS: You mention in your
2 testimony that only qualified staff would be able
3 to review and approve security plans. What
4 specific qualifications would those staff have to
5 have?

6 MR. GREENBERG: That is in the process
7 of being determined as we speak. And certainly
8 the California Energy Commission takes this as
9 seriously, if not more seriously, than the
10 qualifications of an individual who's going to
11 review a hazardous materials management plan or a
12 biology plan or a cultural plan.

13 MR. HARRIS: But you don't have a
14 specific list for me today, is that correct?

15 MR. GREENBERG: I think it would be
16 premature for me to come out with a specific list
17 for you now. I function as a staff, not as a
18 manager.

19 However, again, I would like to point
20 out that we are open, and wanting, we're
21 requesting your assistance on that matter, which
22 is why we put the language in, why we're proposing
23 the language that you have input into those
24 qualifications.

25 MR. HARRIS: I'm moving forward on your

1 testimony. You said -- this is on page, following
2 the list of the various Commissions -- you state
3 "staff welcomes the project owners input regarding
4 proper qualifications, but does not offer project
5 owner veto authority." Do you see that portion of
6 your testimony?

7 MR. GREENBERG: Yes sir I do.

8 MR. HARRIS: Where in Mr. Baysinger's
9 testimony did he suggest that the district would
10 have veto authority?

11 MR. GREENBERG: First of all I don't
12 think he used that word, but the implication was
13 there that, basically they did not want to have--
14 and I believe his testimony today is that he does
15 not want to have review and approval, and that
16 he's very concerned about the qualificaiotns.

17 MR. HARRIS: Are you assuming that there
18 is no dispute resolution process, that if Mr.
19 Baysinger says no to staff then that's the end of
20 it, when you make that veto statement?

21 MS. HOLMES: Can you -- it seems to me
22 you've mixed your two hypotheticals in one
23 question. Can you maybe separate it into two
24 separate questions.

25 MR. HARRIS: I'm not sure I can, but

1 I'll try. In reference to the term "veto", and
2 you've acknowledged that it's not in this
3 statement, are you assuming no dispute resolution
4 process if staff and Applicant disagree as to
5 security matters?

6 MR. GREENBERG: No sir I'm not assuming
7 no dispute resolution process.

8 MR. HARRIS: Okay, thanks. Do you have
9 a fundamental problem with the idea of a dispute
10 resolution process for disagreements between staff
11 and Applicant?

12 MR. GREENBERG: No. The only problem I
13 have is what's proposed specifically here for com
14 8.

15 MR. HARRIS: So how would you envision a
16 dispute resolutions process working?

17 MR. GREENBERG: Utilize the existing
18 process.

19 MR. HARRIS: And what's your
20 understanding of that existing process?

21 MR. GREENBERG: That the Applicant
22 speaks with the CPM, and moves a little bit higher
23 up the food chain if you will of the California
24 Energy Commission. And let me refresh my
25 memory --

1 MS. HOLMES: I'm handing the witness the
2 testimony in the compliance conditions about the
3 informal and formal dispute resolution process. I
4 presume that Mr. Harris wants him to summarize
5 that?

6 MR. HARRIS: I just, just his
7 understanding of what would happen.

8 MR. GREENBERG: To summarize very
9 briefly, my understanding is that, of course, if
10 there is a discussion with the Compliance Project
11 Manager it can be informal. It can be then a
12 discussion with the supervisor of the compliance
13 staff. And then if a formal dispute resolution
14 request is made it goes to the general counsel and
15 is handled in that manner.

16 MR. HARRIS: So then is the distinction
17 between the process proposed by the Applicant, and
18 the process as you understand it, that during the
19 period before dispute resolution the Applicant
20 cannot construct a process or cannot operate it.
21 Is that the fundamental difference then?

22 MR. GREENBERG: I'm a little bit unclear
23 about the question, because it sort of included
24 the answer, and I'm not sure I agree with the
25 answer.

1 MR. HARRIS: The alternative dispute
2 resolution, as proposed by the Applicant, sends
3 the dispute to the siting committee, is that your
4 understanding?

5 MR. GREENBERG: Yes sir.

6 MR. HARRIS: And your understanding of
7 the staff's proposal is that dispute resolution
8 would go to some higher authority in the
9 Commission, is that correct?

10 MS. HOLMES: Again, I'm going to object.
11 He's answered that his understanding is based on
12 the process as its set out in the testimony of Mr.
13 Shaw. We can all read it and can all read what it
14 says. I don't see much point in going over what
15 it is here.

16 MR. VALKOSKY: Ms. Holmes, just let the
17 witness answer yes or no as to his understanding,
18 and we can move through this. Dr. Greenberg, yes
19 or no to Mr. Harris' question?

20 MR. GREENBERG: I think it would be
21 overly burdensome to follow the Applicant's
22 proposal.

23 MR. HARRIS: Overly burdensome. How do
24 the two processes differ, other than the fact that
25 we're stopped during the dispute. Where is the

1 additional burden?

2 MR. GREENBERG: I think it goes to, your
3 proposal, if I understand it, goes directly to the
4 siting.

5 MR. HARRIS: Correct.

6 MR. GREENBERG: As opposed to being
7 handled inhouse by staff.

8 MR. HARRIS: Perhaps that's an area
9 where there is a misunderstanding. Is it your
10 understanding that the Applicant would immediately
11 institute ADR any time -- I use ADR, it would be
12 alternate dispute resolution -- is it your
13 understanding that the Applicant would initiate
14 that process any time there's any disagreement
15 without going through the informal processes set
16 forth in Mr. Shaw's testimony?

17 MR. GREENBERG: That's my understanding,
18 this is instead of not in addition to.

19 MR. HARRIS: Okay, would it make a
20 substantial difference to you if the Applicant
21 represented that it was in addition to instead of
22 in lieu of that informal process?

23 MR. GREENBERG: You know, again,
24 speaking as a technician and not an attorney, it
25 seems to me as if the CEC has a process already,

1 and that other staff has testified that process is
2 adequate. Far be it from me to support an
3 additional layer, but if the Energy Commission
4 staff who are involved in ADR have a different
5 opinion, I would defer to them.

6 MR. HARRIS: Okay, well, just by way of
7 clarification, Mr. Valkosky, I don't want to put
8 it in as an argumentative question. It is the
9 Applicant's intent that the ADR procedure be in
10 addition to the regular informal resolution
11 process.

12 Mr. Baysinger even testified that he
13 thought that we'd never get there, we'd probably
14 just solve these things informally. So if that's
15 not clear from our testimony I apologize to the
16 witness, and maybe that's part of the reason it's
17 been so difficult to get through these questions.
18 I apologize, Alvin.

19 Condition com 8 requires a vulnerability
20 assessment, and states that it must be consistent
21 with the USEPA, the Department of Justice, and the
22 Energy Commission guidelines. Do you recall that
23 portion of your testimony?

24 MR. GREENBERG: Yes I do.

25 MR. HARRIS: Where are the USEPA

1 guidelines set forth?

2 MR. GREENBERG: Interestingly enough,
3 the USEPA has not promulgated guidelines, so what
4 I'm referring to here is their admonition and
5 guidance on security issued as early as the year
6 2000 and also in March of 2001 at facilities which
7 use anhydrous ammonia to guard against theft of
8 anhydrous ammonia by those people who are
9 producing illegally methamphetamine.

10 That seems to be the substance of choice
11 as the source for the nitrogen or the amino group
12 which goes into the production of methamphetamine.

13 The USEPA was thought to be the agency
14 that would develop some vulnerability assessment
15 methodology, and due to -- call it politics in
16 Washington, D.C. -- it turns out that they are not
17 but that is what this statement refers to.

18 Then there is of course the Department
19 of Justice, and there is also, if I may, something
20 that is not listed here --

21 MR. HARRIS: If I -- I was going to take
22 this in order.

23 MR. GREENBERG: Okay.

24 MR. HARRIS: So the USEPA you've
25 discussed. What about the Department of Justice

1 guidelines, where are those guidelines set forth?

2 MR. GREENBERG: They are set forth --
3 and they were produced over a year ago by the US
4 Department of Justice -- you can find them on
5 their website. I provided them to you and other
6 siting cases, so I'm pretty sure you have those
7 guidelines.

8 And those are generic guidelines for
9 facilities that have chemicals, acutely hazardous
10 materials present.

11 MR. HARRIS: So those are the chemical
12 vulnerability assessments, is that correct?

13 MR. GREENBERG: Yes.

14 MR. HARRIS: Isn't it true that that
15 chemical methodology has not been published as a
16 federal guideline, but instead a prototypical
17 model which has been publised for review and
18 comment?

19 MR. GREENBERG: I think you may be
20 splitting hairs there, it has been published as a
21 guideline, and yes they are willing to accept
22 comments on it, and no it has not been published
23 as a regulation.

24 MR. HARRIS: And isn't it also true that
25 methodology is not intended to apply to gas-fired

1 power plants?

2 MR. GREENBERG: It's not specifically
3 meant to apply to gas-fired power plants, and
4 that's why using this as a template, as a model to
5 be consistent with that, and that is one of the
6 reasons why we are developing our own methodology
7 that would be specific to gas-fired power plants.

8 MR. HARRIS: Well, let's move then to
9 the third in your list. You talk about Energy
10 Commission guidelines in the condition. Where are
11 those Energy Commission guidelines set forth?

12 MR. GREENBERG: I believe I've already
13 testified that they are in draft form right now.

14 MR. HARRIS: Okay, thank you. Mr.
15 Valkosky, if I could have just a couple of minutes
16 to confer with my client I may be able to severely
17 truncate this. We're close to being done.

18 MR. VALKOSKY: Mr. Harris, do you want
19 a five minute recess to 1:00? Okay, off the
20 record until 1:00.
21 (Off the record.)

22 MR. VALKOSKY: Back on the record.
23 Continue, Mr. Harris.

24 MR. HARRIS: Thank you, Mr. Valkosky, I
25 think we can severely truncate this. Dr.

1 Greenberg, you started talking about the USEPA,
2 the Department of Justice, and then the Energy
3 Commission guidelines. And then you mentioned
4 that oh, there's another one. Is there something
5 else on that list that you're going to require of
6 Applicants that we ought to know about?

7 MR. GREENBERG: No, and again, these --
8 we're trying to give guidance to you. We didn't
9 have to list anything. We could have just said
10 "do a vulnerability assessment." But we're trying
11 to help you out. And by following those
12 guidelines that would help you out.

13 Again, you wouldn't even have to use the
14 Energy Commission vulnerability assessment matrix
15 or power plant security preparation guidelines.
16 If you do, there is that presumption that the
17 thought process that went into it is adequate and
18 appropriate. You can use another one. You can
19 use somebody else's.

20 But then we'll have to go and look at
21 the underlying assumptions that went into that
22 vulnerability assessment matrix. And that's
23 consistent with what federal agencies are doing
24 nowadays as well.

25 MR. HARRIS: Are you aware of the work

1 that's been done by the office of Energy Assurance
2 within the federal Department of Energy?

3 MR. GREENBERG: I'm aware of some work
4 being done by the Department of Energy, and in
5 fact I do have a security clearance with the US
6 Department of Energy for their online website to
7 get documents and information from them.

8 MR. HARRIS: Have you read this agency's
9 draft vulnerability assessment methodology
10 published in 2002?

11 MR. GREENBERG: If that was prepared by
12 Sandia Labs, yes I've looked at it.

13 MR. HARRIS: And are you aware that this
14 office will develop statewide and regional
15 templates and methodologies expressly applicable
16 to power plants?

17 MR. GREENBERG: And if they are
18 available when I'm able to look at them I will
19 look at that. In my testimony earlier I was about
20 to add -- because there's also security guidelines
21 for the electricity sector developed by the North
22 American Electric Reliability Council -- and so
23 we're interested in those guidelines when and if
24 they become available, and would applaud the
25 Applicant's use of those.

1 MR. HARRIS: Thank you. I want to turn
2 to the FERC document that you read from, related
3 to the Office of Dam Safety. There's only one
4 copy, I'll read this paragraph to you.

5 It says "there are two enclosures with
6 this letter. Enclosure one provides a summary of
7 licensee class exempted requirements for security
8 concerns, and a clarification of what the FERC
9 staff expects from those requirements." Do you
10 have that actually in front of you, Alvin?

11 MR. GREENBERG: Yes I do. What page are
12 you on?

13 MR. HARRIS: I'm on page two, the
14 paragraph that begins "there are two enclosures."

15 MR. GREENBERG: Yes.

16 MR. HARRIS: Okay. And the second
17 sentence in enclosure one provides a summary of
18 the requirements and a clarification of what the
19 FERC staff expects from those requirements. Has
20 the Energy Commission staff provided a similar
21 clarification on what you'd expect for those
22 requirements?

23 MR. GREENBERG: No.

24 MR. HARRIS: The next sentence is
25 "enclosure two includes revision on the FERC

1 security program for hydroelectric projects.
2 Major changes that are made to the program are
3 summarized on pages one and two of the enclosed
4 program." Have you provided a similar document
5 for power plant licensees?

6 MR. GREENBERG: No.

7 MR. HARRIS: Thanks.

8 MR. GREENBERG: Your welcome.

9 MR. HARRIS: Mr. Valkosky, I would like
10 the Committee to take official notice of the
11 document that Dr. Greenberg produced today, and --

12 MR. VALKOSKY: Can you provide us with a
13 copy?

14 MR. HARRIS: This is the only copy we
15 have, but we will get the Committee a copy, yes,
16 of that document.

17 MR. VALKOSKY: Is there an official
18 title and date for that, could you reflect that to
19 the record?

20 MR. HARRIS: I knew you were going to
21 ask me that. It's a long title, it's the "Federal
22 Energy Regulatory Commission Office of Energy
23 Projects Division of Dam Safety and Inspections,
24 New York regional office. It has a street
25 address, which I'll skip, and fax number.

1 The re: line is "FERC Security Programs
2 for hydroelectric projects." It's dated November
3 18, 2002. Dr. Greenberg probably has a website
4 that he can provide to all of us so we can
5 download that as well.

6 MR. VALKOSKY: Is there any objection?

7 MS. HOLMES: No objection.

8 MR. VALKOSKY: Okay, contingent upon
9 your providing the Committee a copy we'll
10 provisionally take official notice of it.

11 MR. HARRIS: The other document we would
12 like you to take official notice of is the
13 chemical vulnerability assessment as referenced in
14 the testimony by the US Department of Justice
15 program. And we actually do have a couple of
16 extra copies of that document for the committee.

17 The title, again, is "Special Report,
18 Final version, A method to assess the
19 vulnerability of US chemical facilities." It's by
20 the US Department of Justice, Office of Justice
21 Programs.

22 I'm looking for a report number. I
23 think the report number is N as in Nancy, C as in
24 charlie, J as in Jeff, 195171. But again, we'll
25 provide a copy for the Committee and perhaps a

1 webstie if we can find that as well.

2 MR. VALKOSKY: Is there objection?

3 MS. HOLMES: No objection.

4 MR. VALKOSKY: Then, again, the
5 Committee will take official notice. That will be
6 designated exhibit 57.

7 MR. HARRIS: And then, finally, Mr.
8 Valkosky, that first question I asked about the
9 Office of Energy Assurance within the Department
10 of Energy, they do have a 2002 vulnerability
11 assessment methodology. We were unable to get a
12 clean copy of that.

13 If we're able to obtain that we may ask
14 the Committee at a later date to take notice of
15 that one as well, but we don't have that available
16 currently.

17 MR. VALKOSKY: Okay, that would be
18 pending then.

19 MS. HOLMES: Staff would be happy to
20 provide the committee with a copy of that.

21 MR. HARRIS: How about the Applicant?

22 MS. HOLMES: Well, that's a different
23 question.

24 MR. HARRIS: That's why I asked. Maybe
25 we didn't have security clearance to download it.

1 (laughter)

2 MR. VALKOSKY: Okay, Mr. Harris, you're
3 asking for official notice of that document, which
4 will be designated exhibit 58. Is that correct,
5 are you requesting that at this time?

6 MR. HARRIS: We are asking that.

7 MR. VALKOSKY: Okay, and as I understand
8 that, staff will provide us a copy.

9 MR. HARRIS: Just a couple more
10 questions for Dr. Greenberg.

11 MR. VALKOSKY: One second. Staff, I
12 assume, since you're providing the copy, you have
13 no objection?

14 MS. HOLMES: That's correct.

15 MR. VALKOSKY: Okay, we'll take that as
16 exhibit 58.

17 MR. HARRIS: Shall I proceed, Mr.
18 Valkosky?

19 MR. VALKOSKY: Please.

20 MR. HARRIS: Dr. Greenberg, have you
21 ever written a security plan for a power plant in
22 California?

23 MR. GREENBERG: For a specific power
24 plant, or one that would apply to many -- no, not
25 a specific power plant, but one that would apply

1 to a number of different power plants if --.

2 MR. HARRIS: Okay, I think you answered
3 my question. Have you ever read a security plan
4 developed for a specific power plant in
5 California?

6 MR. GREENBERG: No, but I have visited
7 power plants, and I've talked with their security
8 personnel, I've gone over the security, and I have
9 looked at sections of the security plan, but not
10 red one entirely.

11 MR. HARRIS: Have you ever written a
12 vulnerability assessment for a power plant in the
13 state of California?

14 MR. GREENBERG: No.

15 MR. HARRIS: And have you ever reviewed
16 such an assessment?

17 MR. GREENBERG: No.

18 MR. HARRIS: Do you have any experience
19 regarding the operation and security of a power
20 plant in California?

21 MR. GREENBERG: I personally do not. My
22 team members, members of my team have experience
23 in writing, reviewing and implementing security
24 plans at power plants at locations other than the
25 state of California.

1 MR. HARRIS: And do you have any
2 training or experience in law enforcement?

3 MR. GREENBERG: No, and the same
4 response would be for members of my team. That
5 is, the same response as before, they have
6 experience in law enforcement, not me.

7 MR. HARRIS: Okay, no further questions.

8 MR. VALKOSKY: Okay, thank you, Mr.
9 Harris. Dr. Greenberg, does com 8 require the
10 construction be stopped in the event there is a
11 dispute over the security plan for project
12 operations?

13 MR. GREENBERG: This goes to an area of
14 enforcement. The intent here is that there be a
15 security plan in place prior to construction. I
16 would have to answer your question then in the
17 affirmative, that the intent is that there would
18 be no construction that would be commencing until
19 the security plan is in place.

20 MR. VALKOSKY: Okay, the security plan
21 for construction or for operations?

22 MR. GREENBERG: For construction.

23 MR. VALKOSKY: Right. Assume that
24 security plan is in place, now I'm understanding
25 that there is a second step when the operational

1 security plan is approved, is that correct?

2 MR. GREENBERG: That is correct.

3 MR. VALKOSKY: Okay. With the
4 construction security plan approved and in place,
5 would construction then need to be halted in the
6 event there is a dispute over the operational
7 security plan?

8 MR. GREENBERG: Again, speaking from the
9 intent here, the answer would be no. The reason
10 is that is an operational security plan that would
11 have to reviewed and approved at least 60 days
12 prior to the receipt of the hazardous materials
13 that dictated the vulnerability assessment and
14 hence security plan to address those
15 vulnerabilities.

16 If an Applicant wished to go forward
17 with constructing a power plant that did not have
18 the proper security at the onset, there are ways
19 of retrofitting. It's always cheaper and easier
20 to do it in the construction phase, but it is not
21 our intent, the siting staff's intent, to halt the
22 construction if there is a dispute over the
23 operation's security plan.

24 MR. VALKOSKY: Thank you, last question.
25 With the importance or the significance of these

1 various federal guidelines that have been referred
2 to be lessened or possibly even, would the
3 guidelines become unnecessary were staff involved
4 in a collaborative process in the outset in
5 developing a security plan for the project?

6 MR. GREENBERG: I think it would
7 probably remain the same, simply because somebody
8 has to start writing the vulnerability assessment
9 and security plan, and that has to be the
10 Applicant. Staff can't start it.

11 And if you're all starting on the same
12 page, where they're following and they let us know
13 we're going to follow your guidelines, or we're
14 going to follow the DOE's, or we're going to
15 follow the North American Electrical Reliability
16 Institute guidelines, or what not, then at least
17 we know where they're starting from.

18 But they are the ones that have to start, and
19 then there could be the collaborative effort. So
20 it probably doesn't matter, because if they don't
21 follow any of those, if they want to develop their
22 own through the use of their own consultant, we're
23 still there at the beginning giving them input.

24 MR. VALKOSKY: Okay, thank you.
25 Redirect?

1 MS. HOLMES: Just a couple of quick
2 questions. At the beginning of your cross-
3 examination, Dr. Greenberg, there was a reference
4 to seven facilities for which you have reviewed
5 versions of com 8. Do you recollect that
6 testimony?

7 MR. GREENBERG: Yes I do.

8 MS. HOLMES: And for each one of those
9 projects, what entity is responsible for the
10 approval of the security plan? Is it the project
11 developer, or is it the Energy Commission?

12 MR. GREENBERG: The Energy Commission.

13 MS. HOLMES: Thank you. Can you tell
14 me, in reference to a question that Mr. Harris
15 asked you about the qualifications of staff, the
16 types of education and training that staff is
17 undergoing in order to become qualified in the
18 area of power plant security?

19 MR. GREENBERG: Yes I can. What we're
20 attempting to do, and what we are doing -- the
21 goal here is to have enough staff have enough
22 information and ability and training to be able to
23 read a security plan, vulnerability assessment,
24 and know whether it meets the guidelines of
25 whatever template you're using. And/or whether

1 it's adequate for the facility.

2 And then to look at the facility to see
3 that the power plant security plan that the
4 project owner has written is actually implemented.

5 So the level of training is not to be
6 misconstrued that somehow these people will be at
7 the level of the FBI or the CIA in threat
8 assessment, but rather they would be at the level
9 of confidence of a good consultant who would come
10 in and conduct a security audit, for example, and
11 say yes, you've written a decent plan, it meets
12 the guidelines, and yes, you've implemented those
13 guidelines.

14 And that's the level that we are
15 achieving for the Compliance Project Managers and
16 siting staff who have been involved in training.

17 MS. HOLMES: And is that process already
18 under way?

19 MR. GREENBERG: Yes it is.

20 MS. HOLMES: Thank you. Those are my
21 only questions.

22 MR. VALKOSKY: Any recross, Mr. Harris?

23 MR. HARRIS: Briefly. You say that
24 process is underway. Is that process going to
25 involve any public participation?

1 MR. GREENBERG: The process that has
2 already occurred, two intensive days, we're
3 talking eight hour days of training including
4 field experience, did not involve the public other
5 than the owner and operator of the power plant in
6 question.

7 MR. HARRIS: So at what point will the
8 public be allowed to comment whether you have
9 selected the proper qualifications for staff who
10 are going to perform these functions?

11 MR. GREENBERG: My testimony is not that
12 the public would or would not be involved, but
13 rather power plant owners and operators would be
14 involved in reviewing and evaluating that. So I
15 wanted to make that clear.

16 Second --

17 MR. HARRIS: So the general public will
18 not participate in this process of determining the
19 qualifications for the staff folks who are going
20 to do your analysis?

21 MR. GREENBERG: Mr. Harris, again that's
22 not my testimony. My testimony is that the power
23 plant owners will be involved. Whether or not the
24 public is or is not is not being addressed in my
25 testimony.

1 MR. HARRIS: Okay -- I'm not trying to
2 be difficult. My question is have you excluded
3 public participation, or have you just not
4 addressed that issue?

5 MR. GREENBERG: We have not excluded or
6 included anybody at this point. We are making a
7 commitment to include you. I am functioning as
8 staff, and I'm not the manager who will ultimately
9 make that decision.

10 MR. HARRIS: Okay, I interrupted you,
11 you had a second point, I'm sorry?

12 MR. GREENBERG: And now I've forgotten
13 it because your other question was more important.

14 MR. HARRIS: I'm sure it was brilliant.

15 MR. GREENBERG: Usually the ones I
16 forget are.

17 MR. HARRIS: You said that in this
18 training they will use some kind of guideline as a
19 template. Is that a reference to your model plan,
20 or --?

21 MR. GREENBERG: No, no the training
22 would be used as a template. They will look to
23 see what you use as your template, you being a
24 power plant owner and developer of a vulnerability
25 assessment and power plant security plan. What

1 template you used, did you use our template, did
2 you use somebody else's template?

3 MR. HARRIS: And by what standard will
4 you judge whether a power plant owner will be
5 using an appropriate template?

6 MS. HOLMES: I'm going to object. It
7 goes beyond the scope of my redirect, which was --

8 MR. VALKOSKY: Sustained.

9 MR. HARRIS: So then project owners are
10 basically free to choose whichever guidelines, or
11 proposed guidelines?

12 MS. HOLMES: Same objection. My
13 redirect was limited to the question of education
14 and training.

15 MR. VALKOSKY: Sustained.

16 MR. HARRIS: And then, if I may, the
17 answer talked about, my notes are staff will read
18 a plan, they'll know whether it's adequate baaed
19 on the guideline or template that the Applicant
20 has proposed, and my question in response to that
21 answer is the Applicant or the owner free to
22 choose the guideline or the template that they
23 propose for staff review?

24 MS. HOLMES: Again, the question that I
25 asked was please explain the type of training and

1 education --

2 MR. HARRIS: I'm not objecting to the
3 question, I'm going to the answer.

4 MS. HOLMES: I'm objecting to your
5 question.

6 MR. HARRIS: The answer is what I'm --

7 MR. VALKOSKY: Okay, this is the third
8 time around this. I want to move off it. Yes or
9 no, Dr. Greenberg, that's it, just yes or no to
10 Mr. Harris?

11 MR. GREENBERG: And his question is?

12 MR. VALKOSKY: Is the Applicant free to
13 choose any template or guideline?

14 MR. GREENBERG: Yes. And you just look
15 at the words --

16 MR. VALKOSKY: That's fine, just yes or
17 no. Let's move on, Mr. Harris.

18 MR. HARRIS: I think that's it.

19 MR. VALKOSKY: Anything else on this?
20 Docketing, Ms. Holmes?

21 MS. HOLMES: Yes. I believe we already
22 moved in the general compliance portion of exhibit
23 11, so what I'd like to do at this point is to
24 move in Dr. Greenberg's testimony that's contained
25 in exhibit 47 on condition of certification com 8.

1 MR. VALKOSKY: Is there any objection,
2 Mr. Harris?

3 MR. HARRIS: No objection.

4 MR. VALKOSKY: Any need for a staff
5 global motion?

6 MS. HOLMES: I don't think so. I think
7 we locally handled it.
8 (laughter)

9 MR. VALKOSKY: That comports with my
10 understanding. Is there anything else on the
11 evidentiary portion of compliance and general
12 conditions? Seeing none, we'll close the
13 evidentiary record, and turn to legal argument.

14 Mr. Harris, how long do you anticipate?

15 MR. HARRIS: I was actually, and this is
16 a serious offer, I was going to ask staff if they
17 wanted to go first, because most of my legal
18 argument is related to the fact that I don't know
19 what their legal bases are, so. If Karen objects
20 I will go first.

21 MR. VALKOSKY: Ms. Holmes?

22 MS. HOLMES: I have an objection to the
23 portion regarding the Applicant's claim that there
24 aren't sufficient confidentiality, conflict of
25 interest protections, and that there are due

1 process violations, because I've never been able
2 to get the Applicant to articulate the specific
3 concerns.

4 I don't have a problem going first with
5 respect to the question of the Commission's
6 authority to require security plans.

7 MR. HARRIS: I'm sorry, Caryn, what were
8 those, due process, and the other one was --?

9 MS. HOLMES: You have made several legal
10 claims. One is that there is insufficient
11 conflict of interest and confidentiality
12 protections if you will. And although I have
13 requested specific identification of both which
14 portions of com 8 create those concerns, and which
15 confidentiality rules or conflict of interest
16 provisions are insufficient to protect against
17 them, I haven't gotten that.

18 So I would like to have you go first on
19 that. And the same issue with due process, you
20 stated that com 8 raises due process concerns, but
21 you've not been specific about which sections of
22 com 8 raise them or what specific --

23 MR. VALKOSKY: Okay, Mr. Harris, you can
24 proceed, and we'll provide both parties an
25 opportunity for a brief rebuttal after the

1 presentation. Please proceed.

2 MR. HARRIS: Thank you. I think what
3 I'll do -- I'll address Caryn's two issues, but
4 let me proceed at the outset -- the basic concern
5 that we have with this entire section is a lack of
6 clear guidance. And you probably can't hear the
7 Applicant say the word LORS enough, laws,
8 ordinances, regulations, and standards.

9 And Applicant acknowledged, and staff
10 acknowledges, this is a rapidly changing field
11 since the events of September 11th.

12 Having said all that though, what we're
13 looking for as a district here is really no
14 different than what we're looking for in all the
15 conditions. You know, the staff talked about the
16 25 that are at issue. But the phrase of the day
17 seems to be where's the bar. We used it earlier.

18 We need to know how to meet the
19 standards. And when you're dealing with something
20 as severe as shutting down construction, or
21 shutting down an operating facility for a
22 vertically integrated utility, with obligations to
23 its ratepayer owners, knowing where that bar is
24 absolutely fundamental and imperative.

25 One I think big misunderstanding, and

1 I'm glad we got to it, in a very painful way, with
2 Dr. Greenberg, is that the alternative dispute
3 resolution process, the ADR that we've talked
4 about, is very much intended to be complimentary
5 and in addition to the informal resolution dispute
6 process.

7 It is not in lieu of that process, and I
8 think that's a very important point to make. Mr.
9 Baysinger, for his operational purposes with the
10 district, and for his financing purposes, always
11 has to go to the dark place, you know, what's the
12 worst possible outcome. The language says staff
13 has to approve, well what if they don't approve?

14 And the answer right now is you don't
15 build it, or you don't operate it. That's why
16 you've seen so much excitement for a condition
17 that probably for years sailed right through all
18 of this. People are kind of waking up to the
19 fact that the new reality is we have to be able to
20 show we can finance these projects.

21 So Ms. Holmes obviously has some serious
22 concerns about lack of specifics on our part, and
23 I'm going to address those with the due process
24 and conflict issues. But the basic fundamental
25 concern that we have is that we're not sure what

1 the LORS are.

2 You know, the Commission's authority is
3 derived from the Warren-Alquist Act, number one.
4 The Warren-Alquist Act has some general provisions
5 in there that speak about the Commission's
6 obligation to provide safe and reliable power and
7 facilities.

8 They don't speak specifically to
9 security. Maybe staff can try to stretch those
10 into authorities for this proposition, but as to
11 the Warren-Alquist Act I don't see the scope of
12 broad authority that staff does.

13 Secondly, as to state laws and federal
14 laws, again I don't see within that universe of
15 authority, authority for the staff to unilaterally
16 approve these plans, especially given this
17 district. The district is a public entity, it's a
18 vertically integrated utility, it's not a merchant
19 power plant operator, it has very different
20 obligations.

21 It has an obligation to serve. It
22 controls generation, transmission, distribution,
23 and water. Pretty vital things for this
24 community, and it takes very seriously those
25 obligations.

1 So we're not being nitpicky at all when
2 we say to staff show us your authority to do this.
3 They need to provide us with their authority.

4 The third source of authority typically
5 is local laws and ordinances, and this Commission
6 has typically deferred to local governments in
7 looking at those types of issues, although they're
8 within your LORS. I don't see anything in local
9 LORS that would provide the staff with this kind
10 of authority.

11 Sounds like we're stewing for a fight
12 here, but we're really not. I think at the end of
13 the day, to use the overused phrase of the day,
14 we'll never get to a point where we need the
15 alternative dispute resolution process, but we
16 have to be prepared for that possibility.

17 That's a very long introduction to
18 Caryn's question, I apologize. The due process
19 concerns, I think the language does matter. We've
20 talked about the evolution of this condition. It
21 is evolving, but when it evolves the words change,
22 and wne the words change that has meaning.

23 And the origin of the due process
24 concerns really goes to the background checks.
25 We've proposed specific language in our testimony

1 that I think is more specific because, from what
2 I'm understanding staff to want there -- and now
3 I'm looking at page 45 of our prefiled testimony,
4 item five.

5 Our words there are a description of the
6 site personnel background checks. "The project
7 owner will use, to ascertain claims of identity,
8 employment history consistent with state and
9 federal law." We believe that language is more
10 specific than what staff has put forth.

11 The language in the evolving com 8,
12 several iterations ago, just basically said
13 "conduct background checks." And that did lead to
14 a lot of constitutional and civil rights concerns.
15 For example, what if you find something? And even
16 before that, what are you looking for? If it says
17 US sites background check on these people, is that
18 a criminal check? Is that an INS check?

19 And I think we finally, through various
20 communications with staff, that staff doesn't want
21 us to do anything different than what we've
22 already done and plan to do. So our language has
23 provided a description of what we plan to do.

24 I think the staff's language was vague
25 enough that it could be interpreted to place an

1 affirmative obligation on Mr. Baysinger and the
2 district to do something different than they
3 normally do. So in terms of due process we're
4 really thinking about the privacy rights and the
5 security rights of our employees and our
6 contractors.

7 And we believe that our language -- the
8 words matter, the evolution matters, but those
9 words I think protect those civil liberty issues
10 and just ask Mr. Baysinger to do what he's already
11 proposed to do consistent with state and federal
12 law.

13 The conflict of interest provisions and
14 confidentiality provisions. First let me deal
15 with confidentiality. We're unaware of any
16 process that we can go through at the Commission,
17 in the Commission's regulations, if we file a plan
18 confidentially it's not clear to us do we then
19 file our briefs confidentially, and do we meet
20 confidentially, and maybe Ms. Holmes can provide
21 us some background on how those confidential
22 procedures go forward, but let's be clear.

23 There's a distinction here that needs to
24 be made. When things like paleo are filed under
25 confidential seal, first off they're informational

1 only, they're very objective they're very
2 scientific, and second the Commission can't rely
3 on those things to make a finding. They have to
4 rely on information in the public record.

5 So it strikes me as a bit odd that
6 something that typically doesn't even form the
7 basis of the finding with the Commission is now
8 going to form the basis of a you can't construct
9 it, or you can't operate it. So those are the
10 basic concerns.

11 If some process can be crafted to
12 protect confidentiality, we share that interest.
13 We don't want to have public meetings on issues
14 related to security. But it's not in the
15 testimony, it's not in the evolving com 8. We
16 don't know how it works.

17 We are left to assume then that we have
18 no recourse over those confidential filings.
19 That's the second aspect, I guess, of the due
20 process concerns that we have. Because if we are
21 then told by staff it's do it the way staff says,
22 and if you don't you can't operate it, if I don't
23 have an appeal route that I can go through
24 quickly, I don't have due process.

25 In terms of potential conflict of

1 interest terms there, this is a different area.

2 It's an evolving area of security, it's a whole
3 new area in which there are certain experts and
4 there are people who are developing expertise.

5 The basic issue here is ensuring that
6 the folks that are reviewing those plans are not
7 also writing them. We think that there needs to
8 be clear standards set forth for the Commission in
9 terms of who's qualified to review such a plan,
10 and what are the responsibilities they may have
11 out there.

12 And it may not be an issue, there may
13 not be that many folks out there who want to be
14 involved on this. But I'll be interested to hear
15 Ms. Holmes talk about that issue as well. And I
16 think I've touched on the issues she's asked us to
17 raise, and at this point again I think our
18 greatest concerns, Mr. Baysinger's greatest
19 concern is that we don't know where the bar is, we
20 don't know what the LORS are that are applicable
21 here.

22 And in light of that uncertainty the
23 answer cannot be don't build it or don't operate
24 it.

25 MR. VALKOSKY: Thank you, Mr. Harris.

1 Ms. Holmes.

2 MS. HOLMES: Thank you. I'll try to keep
3 this short because I'm sure everybody's hungry, at
4 least I am.

5 Let me start with the due process issue
6 that was raised. If I understand Mr. Harris
7 correctly, he stated that the due process issue
8 arises because of the requirement for background
9 checks.

10 As I read staff's testimony with respect
11 to background checks in exhibit 47, and compare it
12 to the Applicant's testimony, the only difference
13 that I see is that the staff has included
14 contractors that are onsite for a considerable
15 periods of time.

16 It's hard for me to understand how that
17 raises specific due process issues, nor did Mr.
18 Harris identify any specific due process
19 provisions that would be offended by including
20 contractors in addition to employees in that
21 requirement.

22 With respect to the question about
23 confidentiality, if I understand the concern
24 correctly it's that there is not a Commission
25 process, adjudicatory process, that would protect

1 confidential information.

2 I have not been involved in confidential
3 proceedings at the Energy Commission, I have been
4 involved in confidential proceedings at other
5 agencies. It's my understanding that the Bagley-
6 Keene Act does not prevent agencies from making
7 decisions on confidential information.

8 There are measures tha must be taken to
9 ensure that what is confidential information is
10 not made public, and I believe that those would
11 apply in this instance here. I think it's ironic
12 that the Applicant is complaining about the lack
13 of a confidentiality dispute resolution process
14 when they're asking for the siting committee to
15 adjudicate disputes regarding com 8.

16 Another issue that was raised has to do
17 with potential conflicts of interest. I don't
18 want to go into all of the conflicts of interest
19 provisions that exist for state employees, I'm
20 sure that both Mr. Valkosky and Commissioner Boyd
21 are familiar with the fact that there are a number
22 of them.

23 They prevent employees and contractors
24 from receiving gifts or income. They require them
25 to disclose certain types of financial interests.

1 And they also prevent employment for certain
2 periods of time after leaving state employment or
3 after the contract ends.

4 Again, I'm not aware of which conflict
5 of interest issues the Applicant is specifically
6 concerned about, so I cannot identify which of
7 those numerous state laws governing conflict of
8 interest would address this issue directly.

9 It seems to me that the most significant
10 issue has to do with the approval authority, and
11 that's the one I want to close with. The
12 Commission is aware that the Warren-Alquist Act
13 requires Applicants to provide information
14 specifically on safety in the application for
15 certification.

16 Public Resources Code 25523A requires
17 the decision to specify conditions that are
18 necessary to ensure public health and safety.
19 That section, and the implementing regulations,
20 are separate from the sections that require the
21 Energy Commission to ensure conformity with LORS,
22 and to ensure compliance with CEQA.

23 Public Resources Code section 25216A
24 requires the Energy Commission to specify
25 conditions under which approval and continuing

1 operation of a power plant shall be permitted.

2 Again, that goes beyond just LORS requirements and
3 CEQA requirements.

4 The fact that there are no LORS, or very
5 few LORS on security issues is unfortunate, but it
6 doesn't mean the Commission should abandon its
7 responsibility to ensure that there is security at
8 power plants. The fact that we can't show TID
9 another approved security plan doesn't mean that
10 we should abrogate our responsibilities to ensure
11 security at CEC power plants.

12 I don't doubt that TID has earned the
13 accolades that Mr. Baysinger referred to earlier
14 this afternoon, or that TID is a well-managed
15 utility. But it's the Energy Commission's
16 responsibility to ensure the security and safety
17 of the sites it licenses, and we cannot wholesale
18 delegate that responsibility to a power plant
19 owner.

20 The Commission has never taken such a
21 dramatic step, and it never should take such a
22 step. We urge the Committee in this case to
23 retain its authority to approve the security plan
24 identified in com 8. Anything else would be an
25 abdication of the Commission's responsibility to

1 ensure public health and safety.

2 MR. VALKOSKY: I have two questions, Ms.
3 Holmes. Is it possible to provide the Applicant a
4 previously approved security plan which has been
5 reacted in various key aspects?

6 MS. HOLMES: I would think that that's
7 possible. We certainly do that in other areas, as
8 you may be aware. I have another life outside of
9 siting, and it involves confidential information.
10 We certainly do that in other areas, so that
11 strikes me as not an unreasonable request.

12 Dr. Greenberg is pointing out that if
13 the Applicant's retain all of their plans onsite
14 we won't have copies of them.

15 MR. VALKOSKY: Does that mean that if
16 you ask the Applicant for a copy they would not
17 provide one?

18 MS. HOLMES: I would assume we could
19 obtain copies of them. I think there is a
20 reluctance to do that on the -- we don't like to
21 have any more confidential information than we
22 need inhouse.

23 MR. VALKOSKY: That's understood. What
24 I'm inquiring about is would it be possible to get
25 a copy of an approved plan, which has been reacted

1 of certain information, and your answer is yes?

2 MS. HOLMES: Yes.

3 MR. VALKOSKY: Okay, thank you. Second
4 question, you indicated basically you're talking
5 about a site personnel background check, that's
6 item five in applicant's testimony, and item ten
7 on page 14 of staff. And I indicted the addition
8 of the routine onsite contractors was the only
9 difference.

10 And in the annotated version Applicant
11 has included the words "a description", and from
12 their comment apparently attaches a good deal of
13 significance to the inclusion of those words.
14 Does staff has any objection to including --?

15 MS. HOLMES: They are included in the
16 introductory paragraph in staff's testimony. If
17 you look under the first full paragraph under
18 "operation security plan" it states that the plan
19 must describe the measures and describe which
20 measures are planned for implementation and how
21 they will be implemented. I see that as the same
22 thing.

23 MR. VALKOSKY: Okay, thank you.

24 COMMISSIONER BOYD: Mr. Valkosky, a
25 question then, it's almost -- well, we'll see

1 where it goes. It's the same general area. Under
2 due process you referenced the Applicant's seeming
3 difficulty with including contractors, and
4 therefore a wording problem with the proposal.

5 If I recall correctly, Mr. Harris said
6 earlier in the day that his definition of site
7 personnel, the intent was to include all, so we
8 are down to semantics here, possibly.

9 MS. HOLMES: The reason that I raised
10 the question, when he gave his oral argument, Mr.
11 Harris, when asked to address the due process
12 issue, specifically addressed this subsection of
13 the security plan. I mean, if there's no
14 difference between the staff and the Applicant's
15 then it's hard to imagine there was a due process
16 problem.

17 COMMISSIONER BOYD: Okay, thank you,
18 that's all.

19 MR. VALKOSKY: Okay. Rebuttal, Mr.
20 Harris.

21 MR. HARRIS: As to this issue, not a
22 rebuttal at all. It is our intent that it cover
23 both our employees and our contractors. And the
24 important issue there is "a description of." I
25 think the committee has figured out where our

1 concern is.

2 But we weren't trying in any way to
3 suggest that just because someone doesn't get a
4 paycheck from TID that they don't need to be
5 checked. So there's not a disagreement there.

6 Going through the issues in the order
7 presented by Ms. Holmes, confidentiality. I'd be
8 glad to take a look at what she has to say about
9 Bagley-Keene. We welcome the opportunity to
10 understand better that maybe we do have some
11 recourse here.

12 We don't understand that, and we
13 certainly don't understand that from the
14 testimony, so to the extent she can enlighten us
15 on those issues and how other agencies deal with
16 these confidentiality questions, there must be a
17 model out there that we can become comfortable
18 with.

19 In terms of the conflict of interest,
20 again, it would just be nice to have those
21 specific requirements set forth somewhere so we
22 understand them. As someone who has to deal with
23 Form 700 because of my wife's employment, I get
24 it. But it would be nice to know is that the only
25 one we're concerned about.

1 And then finally, you know, some very
2 strong words from Ms. Holmes about the Committee
3 should not abandon your responsibility and that
4 they should not delegate your authority in
5 wholesale. Let's be very clear. We are not
6 asking you to do that, not at all.

7 In fact, we think you cannot do that.
8 Your authorities are non-delegable. But let's
9 pull back the curtain and distinguish between
10 whether the staff has a veto over a plan versus
11 the Commission's authority to make sure that we
12 have an adequate security plan.

13 If you follow the process through
14 informal resolution to more formal into this ADR
15 process we've described, the Commission is
16 abrogating nothing, the Commission abandons
17 nothing, the Commission ultimately decides, staff
18 does not. And that's the heart of the issue.

19 We're asking that we be given the
20 ability to take our process -- and hopefully we'd
21 never get to that end date -- to the somebody of
22 the Commission beyond the staff. And so I'm not
23 surprised that staff would not want to abrogate
24 what they see as their authority to unilaterally
25 decide these things, but we are not asking the

1 Commission to abrogate your duties in this regard.

2 Thank you.

3 MR. VALKOSKY: Thank you, Mr. Harris.

4 Ms. Holmes?

5 MS. HOLMES: Nothing other than to say
6 that if the Applicant wishes, we will summarize,
7 to the extent I can, all the various conflict of
8 interest provisions that apply to CEC staff and
9 contractors in our brief, and we'll also be happy
10 to provide a summary of the way -- I'm only
11 familiar with two other agencies that I've
12 personally been involved in with confidential
13 hearings -- but I would be happy to describe how I
14 think that process would work.

15 MR. VALKOSKY: I certainly think that's
16 appropriate for the briefs, and it's a wonderful
17 segue into the --

18 MS. HOLMES: Into the topic of when.

19 MR. VALKOSKY: Absolutely.

20 MS. HOLMES: Since Mr. Harris is going
21 on vacation for two weeks, I think we ought to
22 make him do two weeks hence.

23 COMMISSIONER BOYD: Excuse me, before
24 you jump off and totally close the issue down, and
25 what I'm about to say I'll let Mr. Valkosky jump

1 on me if I'm getting out of line legally here, but
2 an observation about your alternative suggestion
3 of having a siting committee be the adjudicatory
4 body here.

5 Just an advisory. In my mind, as a
6 Commissioner, that brings up a lot of process
7 questions that could take longer to resolve
8 internally in this Commission than you would like
9 your application to go.

10 Because it seems to me that that is an
11 issue that the Commission itself would have to
12 decide, as it dispenses its authority to its
13 various committees and what-have-you.

14 So just so you note, you may get in
15 deeper than you want to get with that specific
16 recommendation, without speaking at all to the
17 idea of a alternative adjudicatory process, just
18 FYI, let's say.

19 MR. VALKOSKY: Yes, I'd just like to add
20 that I think those are very relevant concerns that
21 may cause some internal difficulties.

22 MR. HARRIS: I thought you were going to
23 say internal bleedings. So can I respond just
24 briefly. If the Siting Committee is not the
25 proper venue we're certainly open to other

1 suggestions. We don't want to create something
2 that is going to take forever to solve.

3 We just need some way to get to the
4 Commission, and that was the most convenient way
5 that occurred to us. We're certainly open to
6 other ideas.

7 MR. VALKOSKY: Ms. Holmes, do you have
8 anything further to add on this?

9 MS. HOLMES: Just to say that there is
10 an existing process and it's set out in staff's
11 testimony in section seven.

12 MR. VALKOSKY: Briefing period. Last
13 item. Mr. Harris, do you --

14 MR. HARRIS: I'm still having trouble
15 letting go of that last one, because -- let me be
16 specific. Because if we follow that existing
17 process we have to file a complaint against
18 ourselves. That's the existing process in section
19 seven.

20 MR. VALKOSKY: We can argue that in the
21 brief. I think it's time to let go now.

22 MR. HARRIS: I've felt like doing that
23 before, but I've never actually done it, so --.

24 MR. VALKOSKY: Am I to understand that
25 you're going to be gone for a couple of weeks?

1 MR. HARRIS: That's, seriously though,
2 it has no moment in your decision. Mr. Wheatlnad
3 is more than capable, and my first responsibility
4 is to my client, and Mr. Baysinger's driving
5 mantra to us all has been we want to build this
6 thing quickly, so my disappearnace has no effect
7 whatsoever on the briefing schedule.

8 MR. VALKOSKY: Well, today's the ninth.
9 Given a particular period of seven to ten days to
10 have the transcript prepared, that brings up to no
11 early, by my count, then the end of the month, the
12 31st. Does that create any difficulty with
13 anyone?

14 MR. HARRIS: The only problem is I'll be
15 back by then, and so --
16 (laughter)

17 MR. VALKOSKY: It seems to me you have
18 the option of extending your vacation?

19 MR. HARRIS: No one's happier than Mr.
20 Baysinger and Mr. Wheatland, I think.

21 MS. HOLMES: Are you suggesting that the
22 briefs be due on Halloween, Mr. Valkosky?

23 MR. VALKOSKY: That is exactly what I'm
24 suggesting, it's just the way it works out.

25 MS. HOLMES: As long as we're --

1 MR. VALKOSKY: Oh, but how about on the
2 first, the day of the dead?

3 MS. HOLMES: I think I'd rather have it
4 before the festivities than after.

5 MR. VALKOSKY: Anyway, will that work.
6 Then reply briefs will be due about two weeks
7 later, on the 14th? Unless there is an
8 intervening holiday.

9 MR. HARRIS: I'm sorry, Mr. Valkosky.
10 In terms of briefing I assume you only want us to
11 brief the controverted subjects. Although we will
12 certainly --

13 MR. VALKOSKY: That's all I really need,
14 you know. I would never want to infringe upon
15 anything a lawyer wants to brief. But yes, that's
16 the Committee's primary interest.

17 Okay, is there any generalized public
18 comment on any of the areas?

19 MS. HOLMES: One last question.

20 MR. VALKOSKY: Caryn?

21 MS. HOLMES: Will there be an order for
22 the brief?

23 MR. VALKOSKY: No, there will -- a
24 briefing order? No, there will not.

25 MS. HOLMES: Thank you, then I missed

1 it. Did you set a reply brief date?

2 MR. VALKOSKY: The 14th of November.

3 MS. HOLMES: Thank you. I did miss it,
4 I'm glad I asked.

5 MR. VALKOSKY: We're talking about
6 Halloween, and we're talking about November 14th.

7 MS. HOLMES: Thank you.

8 MR. VALKOSKY: And if those are both on
9 Fridays, then I guess I will have to issue an
10 order adjusting the date, but I think those dates
11 are okay. With that, if there's nothing else?

12 MR. HARRIS: There is something else,
13 I'm sorry. The staff is going to try and provide
14 a reacted plan, which would be very helpful to us.
15 Could we have a couple of weeks so we could have
16 that before we brief? I don't want to slip the
17 briefing schedule, but it would be good to have
18 that in advance of the briefs. So could we least
19 put a target out there for, you know, two weekends
20 maybe?

21 MS. HOLMES: There is no plan that's
22 been prepared yet, is my understanding. People
23 are still in the process of preparing them. So
24 there is no plan at this point for any power plant
25 developer to redact.

1 I had assumed, Mr. Valkosky, when you
2 were asking the question during oral argument,
3 that you were referring to at some point down the
4 road as they begin to develop their plan, and we
5 have committed to doing that to you when a plan
6 becomes available.

7 But at the current time there simply is
8 no plan that is available, because none of the
9 other developers are that far along. Some of the
10 plants that were licensed earlier on, as you know,
11 are not proceeding immediately with construction.

12 And the more recent ones are still in
13 the process of developing plans.

14 MR. HARRIS: Can we swear Ms. Holmes and
15 have her put that back in the evidentiary record?
16 No, I'm just kidding.

17 MS. HOLMES: You can check the
18 compliance filings, if you want.

19 MR. HARRIS: No, I think that's our
20 understanding as well, that there isn't an
21 approved plan that we can get reacted or
22 otherwise.

23 MS. HOLMES: At this time.

24 MR. HARRIS: At this time. All right,
25 we would like two other things, Mr. Valkosky. Dr.

1 Greenberg's qualifications were not included. We
2 would like to have those -- immediately
3 apparently, so we have those.

4 MR. VALKOSKY: Let the record reflect,
5 he's just been provided those.

6 MR. HARRIS: So we'll scratch those off
7 the list. And then the last thing is I wanted to
8 ask Caryn, would you mind if we shortened the
9 period between the brief and the reply, just to
10 help move Mr. Baysinger along?

11 MS. HOLMES: What are the days of the
12 week that we're talking about? They're both
13 Fridays. So Friday to what?

14 MR. HARRIS: To the following Monday
15 perhaps?

16 MR. VALKOSKY: There is a federal
17 holiday in that period, there's Veteran's Day.

18 MS. HOLMES: There's Veteran's Day in
19 there?

20 MR. VALKOSKY: That's correct, on the
21 11th of November.

22 MS. HOLMES: So the brief -- I wish I
23 had the calendar in front of me.

24 MR. HARRIS: So currently it's the 31st
25 and then two days after that is --

1 MR. VALKOSKY: The 14th, yes.

2 MS. HOLMES: And one of those days is a
3 holiday.

4 MR. HARRIS: Shall we set it for the
5 10th or the 12th, is that going to be a --?

6 While Ms. Holmes is looking, just FYI,
7 we're trying to move towards financing on the
8 project, and that's one of the reasons days may be
9 important to us, and we may actually even -- I
10 think I can say this -- go to market with a PMPD,
11 as opposed to a final decision, just to get to
12 market quickly. And so the days are important.

13 MS. HOLMES: I understand your concern,
14 and I'm not unsympathetic. But unlike you I don't
15 have other people that I can ask to help, so what
16 I'd like to do at this point is to keep it with
17 the 14th, but as we have on the conditions that
18 we've been able to reach agreement on, once I get
19 a chance to see your reply brief I will contact
20 you and let you know if I can file it sooner, and
21 if I can we'll agree on an earlier date. I will
22 try very hard to do that.

23 MR. HARRIS: Fair enough. I appreciate
24 that.

25 MR. VALKOSKY: Okay, and I'd like to

1 advise that in the Committee's interpretation the
2 14th means no later than the 14th. There's
3 certainly nothing wrong with having it done
4 earlier.

5 Anything else?

6 MR. HARRIS: Apparently not.

7 (laughter)

8 MR. VALKOSKY: With that, thank you all
9 for your attendance and participation, and we're
10 adjourned.

11 (Thereupon, the hearing was adjourned at 1:56
12 p.m.)

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CERTIFICATE OF REPORTER

I, ALAN MEADE, an Electronic Reporter,
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Energy Commission Hearing; that it was thereafter
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I further certify that I am not of
counsel or attorney for any of the parties to said
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IN WITNESS WHEREOF, I have hereunto set
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